Children Chapter

This chapter was led by Jennifer Nagda (Young Center) and Santiago Mueckay (Save the Children Action Network).

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Introduction

Under the Trump administration, children and their families have been explicit targets of anti-immigrant policies. The administration used certain policies, including its now infamous family separation policy, as a deterrent for migrants and asylum seekers that inflicted unbelievable harm on children and their families. During COVID-19, vulnerabilities and the Trump administration's specific goal of child cruelty were further exposed. The pandemic underscored the danger of placing children and families in large, congregate care settings. The administration expanded its use of instituted fast-tracked immigration hearings and subjected children to hearings by video. Perhaps most egregiously, the administration used the pandemic as a pretext to close the border to families and children seeking asylum, expelling thousands of children without due process or regard for their protection needs. The U.S. immigration system has been twisted into one of deterrence instead of one of protection, and children have borne the brunt of these policies.

For years before and especially during the Trump administration, immigration law has not reflected the fact that children are different from adults, and therefore should have particularized policies and procedures to protect their safety and well-being. The current protections in law for children--The Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act of 2008--are vital. These protections should be preserved and built upon to create a system that fully honors children's needs and best interests.

In light of longstanding inadequacies and recent policies that specifically harm children, the chapter participants believe that a separate chapter was necessary to lay out a more holistic set of protections for children, both accompanied and unaccompanied. The policies in this chapter are based on certain core principles:

1. The U.S. immigration system should recognize immigrant children first as children.
2. Children are different from adults, and each component of government should have policies and procedures that take those differences into account.
3. The best interests of the child should be a primary consideration in decision-making and policy development of U.S. immigration laws.

In order to incorporate these principles into policy, the administration should put out a presidential memo within the first 100 days outlining the administration's commitment to protecting the safety and well-being of immigrant children. The memo should include the creation of a coordinator role out of the White House on immigrant children's issues and reinstatement of the Inter-agency Working Group on Unaccompanied Children to coordinate child-sensitive standards across relevant agencies. Lastly, the administration should put forth a mandate from the Executive for government officials to consider the best interest of the child in all immigration decisions and policy making, and support legislation to create such a mandate through federal law. The following sections outline specific policies to protect immigrant children along every step of their journey.

Topic #1: Access to Legal Relief for Children

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In the past several years, a series of policy changes have targeted protections for children in the immigration system and dramatically undermined children's ability to have their immigration cases fully and fairly considered. These changes have weakened critical measures intended to address the unique developmental needs of children in the immigration system and erected new hurdles to obtaining humanitarian protection. In so doing, they have imperiled the lives and safety of thousands of children.

Thousands of immigrant children come to the United States alone or with their families each year, many having fled life-threatening dangers in their countries of origin. Children are then placed into immigration proceedings and face the same legal standards as adults, with few accommodations to recognize their particular needs and vulnerabilities as they navigate one of the most complex areas of the law and an immigration system designed primarily for adults. Despite the high stakes of these proceedings—and in contrast to the U.S. criminal justice system—the U.S. government does not appoint counsel to represent those in the immigration system, including children. More than half of children, including toddlers, face immigration court without a legal representative. Without this critical assistance, it is nearly impossible for children to present evidence and prove their legal cases—a due process crisis that threatens to return children to the dangers from which they fled. Indeed, only 1 in 10 unaccompanied children without a legal representative obtain U.S. protection; with legal representation, unaccompanied children are five times more likely to receive legal protection.

No child should be returned to harm for lack of a fair process. Yet recent Trump administration measures have only heightened this risk, including policies that would deny children a non-adversarial setting for humanitarian protection and apply unnecessarily heightened scrutiny for children's legal claims. Expedited dockets for detained unaccompanied children have led to the deportation of many without legal representation or a meaningful opportunity to present their claims for protection.

More troubling still, in response to the COVID-19 pandemic the Trump administration has blocked the ability of unaccompanied children to access the U.S. immigration system altogether and summarily expelled thousands of children without any protection screening or legal process, in violation of special protections provided by the Trafficking Victims Protection Reauthorization Act (TVPRA), as well as U.S. and international law related to treatment of asylum-seekers.

Opportunities abound to reverse these harmful changes while simultaneously advancing policies and practices that reflect a commitment to treating immigrant children as *children* first and foremost.

Subtopic #1: Support for Full Legal Representation for All Children

Recognizing the unique vulnerability of children facing the immigration system alone, the TVPRA directs the Department of Health and Human Services (HHS) to "ensure, to the greatest extent practicable . . . that all unaccompanied children who are or have been in the custody of the Secretary or the Secretary of Homeland Security . . . have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking," (8 U.S.C. § 1232(c)(5)). The TVPRA further directs HHS to "make every effort to utilize the services of pro bono counsel,"and provides for the appointment of child advocates to advocate for the best interests of particularly vulnerable children (8 U.S.C.§ 1232(c)(6)). Pursuant to these directives, the Office of Refugee Resettlement (ORR) provides financial assistance to support a network of legal service providers. These funds are critical to safeguarding the rights and well-being of unaccompanied children, and the next administration and Congress should increase these funds to provide legal services for the greatest number of children possible. Additionally, the Department of Justice (DOJ) should seek to provide children with legal representation (including through the Appointed Counsel Program suggested in *Topic #5, Subtopic #1 of the DOJ Policies Chapter)* and sponsors of unaccompanied children with legal orientation through the Legal Orientation Program for Custodians.

Priority action #1: Allocate existing funds through ORR's Unaccompanied Alien Children program to support in-person, direct, and comprehensive legal representation of the greatest number of children, prioritizing the following groups:

- Children in ORR custody
- Children in immigration proceedings
- The 15 cities with the highest number of released unrepresented children
- Children with significant need, including children with disabilities or mental health needs

ORR should also direct funding to support pro bono legal representation.

Priority Action #2: Seek additional funds to expand independent Child Advocate services to additional locations with the highest number of detained children or children appearing in immigration court. *(See Subtopic #3, Priority Action #5 of the ORR Unaccompanied Children Program Section in this chapter for additional information).*

Priority Action #3: Allocate existing funds for ORR's Unaccompanied Alien Children program to support in-person, independent, comprehensive, and effective Know Your Rights presentations and legal screenings, which should be provided in a manner that is sensitive to the age, culture, best (native) language and the complex needs of each child.

Priority Action #4: Express strong support for increased appropriations for ORR's Unaccompanied Alien Children program to allow for full legal representation of all unaccompanied children. The Fair Day in Court for Kids Act of 2019 (S. 662; also included as part of broader legislation in the House and Senate) provides for government-appointed and government-funded legal counsel for all unaccompanied children for the duration of their removal proceedings. The DOJ and HHS should express support for this legislation and the legal representation model detailed within it.

Priority Action #5: Issue policy guidance and include in facility contracts a requirement that ORR grantees, including those operating influx facilities, facilitate meaningful access to legal representation, including by making available dedicated, private space for legal representative-client meetings and by maintaining routine communication with legal service providers. Policy guidance and facility contracts should also prohibit ORR care providers from sharing information about children in their care (including information about children's reunification or legal cases) with the Executive Office for Immigration Review (EOIR). (*See the ORR Unaccompanied Children Program Section in this chapter for additional information).*

Priority Action #6: Allocate additional funds to, and support increased appropriations for, EOIR's legal orientation programs to allow for the expansion of the Legal Orientation Program for Custodians (LOPC) to all immigration courts. The LOPC informs sponsors about the immigration court process and related responsibilities, legal relief that may be available to children and opportunities to secure pro bono legal assistance. *(See Subtopic #2 of Topic #5 in the DOJ Policies Chapter for additional information on Legal Orientation Programs).*

Priority Action #7: Restore and expand DOJ's justice AmeriCorps (jAC) program, or establish a similar model to support pro bono legal representation of unaccompanied children who have been released from ORR custody. The jAC program, which the Trump administration terminated in 2017, funded attorneys to represent certain unaccompanied children released from ORR custody. The program proved effective in increasing legal representation and pro bono activity, enhancing the efficiency of court proceedings through improved case preparation, and identifying victims of trafficking and abuse. In restoring the program, the government should lift restrictions on eligibility, such as limitations based on a child's age, to enable the broadest

representation possible. *(See Subtopic #1 of Topic #5 in the DOJ Policies Chapter for recommended Appointed Counsel Program for all indigent immigrants facing removal).*

Subtopic #2: Advance a System for Deciding Children's Cases That Appropriately Addresses Children's Developmental Needs, Vulnerabilities and Best Interests

Multiple barriers prevent children from having their cases for legal relief fully and fairly considered in immigration courts. More than half of children in immigration court proceedings lack legal counsel and must attend hearings and confront an adversarial court setting, an immigration judge, and a DHS attorney alone, despite having little to no understanding of the laws and procedures being applied to their cases. Additional factors—such as language barriers, age and developmental stage and trauma history—may further limit a child's ability to meaningfully understand or participate in court proceedings.

While the government has taken steps in intervening decades to incorporate developmentally appropriate and child-sensitive practices within the immigration court system, due process for children demands a more comprehensive shift: a system rooted in children's needs and best interests from the outset.

Recent administrative actions have taken children's cases in the opposite direction, completing ignoring children's needs and best interests. In recent decisions, the attorney general has imposed performance metrics and narrowed the discretion of immigration judges to use the docket tools of administrative closure and continuances, which are often critical to ensuring due process in children's cases. These tools allow children and others additional time they may need to obtain legal representation, prepare their cases for relief, or await decisions on pending applications for relief under USCIS's jurisdiction. These include asylum applications filed by unaccompanied children, SIJS petitions, and applications for visas for victims of serious crime or trafficking. The recent decisions, however, effectively demand that immigration judges either overlook children's eligibility for USCIS-based relief or prejudge the outcome of those applications, usurping the jurisdiction of USCIS.

Additional measures such as the increased use of hearings by video teleconferencing (VTC) further preclude fair consideration of unaccompanied children's legal claims and risk their return to harm. In VTC hearings, children appear by video before an immigration judge sitting potentially hundreds of miles away. Without the ability to identify who is speaking or to see clearly throughout the proceedings, children cannot adequately understand and participate. Legal representatives often must choose between appearing in the courtroom alongside the immigration judge and DHS attorney, or appearing with their client in a different location. This is an impossible choice that denies children the ability to consult with their legal representative and the ability of legal representatives to fully and fairly present their clients' cases. Technical difficulties and malfunctions only add to these barriers. In recent months, the Trump administration has doubled down on the use of these problematic hearings, implementing a highly flawed pilot program and taking steps toward instituting a nationwide VTC docket for detained unaccompanied children.

VTC hearings—and plans for their national expansion—have continued even amid the global COVID-19 pandemic, threatening the health and safety of everyone involved in proceedings and restricting the ability of children and their legal representatives to confer, prepare, and compile necessary evidence and documentation before their cases are considered. Continuing these hearings despite the concerns from children and their legal representatives risk returning children to harm.

A better approach is not only possible, but essential to ensure that no child is returned to harm.

Priority Action #1: To the maximum extent possible, implement procedures that take children's cases out of immigration court, including through the use of initial jurisdiction by USCIS over children's applications for legal relief. USCIS should make clear in policy that only in extraordinary circumstances are children's cases referred to immigration court. In companion guidance, EOIR should instruct immigration judges to administratively close, continue or terminate the cases of children applying for relief before USCIS. (see additional priority actions on continuances and administrative closure below.) DHS's Office of the Principal Legal Advisor (OPLA) should issue guidance advising DHS attorneys to join motions to administratively close, continue, or terminate children's cases to allow for USCIS adjudication.

Priority Action #2: Create specialized dockets for children and issue immigration judge guidance for those rare circumstances in which children's cases may be in immigration court. (see Subtopic #3, Priority Action #1 below, recommending rescission and replacement of 2017 EOIR guidance related to children's cases.) Guidance should underscore the importance of immigration judges creating a child-friendly court environment, require the use of child-sensitive and developmentally appropriate questioning and procedures (including frequent breaks), and direct appropriate accommodations for children's appearances in court and presentation of testimony and evidence.

Priority Action #3: Create a specialized corps of asylum officers and immigration judges trained in and with significant experience using child-sensitive interviewing techniques and addressing substantive issues that frequently arise in children's cases. The government should require that all immigration judges and USCIS personnel adjudicating children's cases first undergo headquarters-level, in-person training with experts and advocates in children's cases. Thereafter, immigration judges and USCIS personnel should attend annual trainings with experts and advocates on issues pertinent to children's cases.

Priority Action #4: Issue a joint policy memorandum from DHS and EOIR providing that DHS will file Notices to Appear (NTA) for unaccompanied children no earlier than 60 days after a child's entry into the United States except at the request of the child's legal representative. Additionally, EOIR should schedule initial "master calendar" hearings for unaccompanied children no earlier than 30 days from the immigration court's receipt of the NTA.

Priority Action #5: Rescind the Attorney General opinions in *Matter of Castro-Tum*, *Matter of L-A-B-R-*, and *Matter of S-O-G and F-D-B-*, and replace with decisions underscoring the discretion

of immigration judges to use docketing tools as necessary to ensure due process. *(See Subtopic #1 of Topic #1 in the DOJ Policies Chapter for additional information).* EOIR should also remove performance metrics that incentivize immigration judges to not use docketing tools. An Executive Order on immigration courts should acknowledge the vulnerability of children in the immigration system and declare a commitment to ensuring fundamental fairness through the use of child-friendly accommodations, judicial discretion, and docketing tools. *(See Subtopic #1 of Topic #1 in the DOJ Policies Chapter for additional information).*

Priority Action #6: Direct, through policy guidance, that immigration judges administratively close, continue or terminate proceedings any time a child is applying for relief before USCIS or is not represented by counsel. This guidance should further provide for the automatic reopening of a child's case following an *in absentia* removal order if the child lacked legal counsel at the time the order was entered. The guidance should further clarify that under the TVPRA, an unaccompanied child is entitled to pursue a legal case regardless of whether the child was a party to a prior proceeding under the so-called Migration Protection Protocols (MPP). To this end, DHS should issue guidance directing that a new NTA be filed for any unaccompanied child previously placed in MPP with their family to prevent the issuance of removal orders without full and fair consideration of their legal cases as unaccompanied children.

Priority Action #7: Create a DOJ policy directing immigration judges to ensure that children requesting voluntary departure have counsel and an independent child advocate, and fully understand the consequences of the request.

Priority Action #8: Amend DOJ regulations to clarify that immigration judges should not conduct individual merits hearings via VTC, nor should immigration judges use VTC in any proceedings in children's cases, unless requested by a child's counsel and in a child's best interests. EOIR should issue guidance to discontinue the current use of court wide VTC dockets for detained unaccompanied children and to enable reconsideration of any adverse decisions, orders or motions previously rendered through such dockets. *(See Subtopic #4 of Topic #2 in the DOJ Policies Chapter for additional information).*

Subtopic #3: Restore and Expand Child-Sensitive Procedures to Facilitate a Fair Process for Children

Recently, a number of policy changes have taken aim at procedural protections and guidance designed to ensure that children will be able to adequately prepare and present their legal cases and meaningfully participate in proceedings that may decide their safety and futures. In stark contrast to Congress's concern for the particular vulnerability of unaccompanied children through enactment of the TVPRA, these actions have urged adjudicators to fast track children's cases and view children's legal claims with skepticism, narrowed access to advocates who can safeguard children's best interests, and empowered adjudicators to strip children of vital statutory protections.

For example, the Trump administration has expanded the use of "rocket dockets" to adjudicate the cases of unaccompanied children within days of their arrival—requiring that children appear in court and present their legal cases while they are still in government custody and have no legal representation. These procedures are decidedly inappropriate for children, who are not only unfamiliar with complex immigration laws but are frequently survivors of trauma and extreme violence. Children need time to develop the necessary rapport and trust with legal representatives and other professionals to feel safe disclosing prior trauma and harms that may give rise to eligibility for immigration relief, and this frequently does not occur until after a child is released from federal custody. Expedited dockets may also force children to enter pleadings in immigration court, potentially waiving forms of legal relief for which they may be eligible, before they have even had an opportunity to consult with a legal representative.

Policies that tip the scales of justice against children not only defy basic notions of fairness and due process, but also threaten to return children to the very harm, abuse or persecution from which they fled. By contrast, child-sensitive procedures and legal representation ensure due process for children and facilitate the thoughtful, orderly presentation of their legal claims. It is critical that the government fully and fairly considers legal cases of all children through procedures that safeguard their best interests and align with federal law and basic child welfare principles.

Priority Action #1: Rescind the 2017 EOIR memorandum to immigration judges on guidelines for immigration proceedings involving juveniles that promotes skepticism toward claims by unaccompanied children and undermines child-sensitive practices. Replace with a new memorandum that restores critical language from the prior 2007 memo OPPM 07-01 (2007), Guidelines for Immigration Court Case Involving Unaccompanied Alien Children including among other things, language related to use of the "best interests of the child" standard in relation to ensuring child-appropriate hearings as well as language promoting child-sensitive interviewing techniques.

New guidance should expand on the 2007 memo and also (1) require immigration judges to consider in writing best interest recommendations submitted by independent Child Advocates; (2) require immigration judges to consider whether a child can be safely repatriated, consistent with the TVPRA; (3) permit immigration judges to allow parents who wish to participate in removal proceedings to do so, with the child's consent; (4) discontinue the use of "rocket dockets" for unaccompanied children in detention; and (5) authorize "friend of the court" practice and assistance. EOIR should also draw on considerations highlighted in the ABA Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States (2018).

Priority Action #2: Rescind 2019 Friend of the Court and Child Advocate memos. The DOJ should restore the 2014 Friend of the Court memo for unaccompanied children in immigration proceedings. The DOJ should replace the Child Advocate memo with a new one explaining the role of the independent child advocate under the TVPRA and proper consideration of best interest recommendations in decisions regarding unaccompanied children.

Priority Action #3: Permanently rescind the May 31, 2019 USCIS memo titled Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children that permitted USCIS to redetermine a child's "unaccompanied alien child" (UAC) status and reject jurisdiction over asylum applications filed by children previously determined to be UAC, and rescind *Matter of M-A-C-O-*, 27 I. & N. Dec. 477 (BIA 2018). *Matter of M-A-C-O-* authorizes immigration judges to take initial jurisdiction over asylum applications of UAC who file after they turn 18, in spite of a child's previous UAC determination and the fact that USCIS has accepted jurisdiction over the child's asylum application under that agency's initial UAC jurisdiction authority. DHS and EOIR should clarify that children the federal government determines to be UAC upon apprehension or discovery retain UAC protections, including access to USCIS's initial jurisdiction over their asylum claims, throughout their immigration proceedings. USCIS should return to accepting jurisdiction over UAC asylum applications pursuant to the framework set forth in the 2013 memo, such that the agency accepts initial asylum jurisdiction over applications filed by individuals who DHS previously determined were UAC—adopting the previous UAC determination rather than re-determining UAC status at the time of filing—unless there has been an "affirmative act" by CBP, ICE, or HHS to terminate the UAC finding before the child filed the asylum application. USCIS should issue guidance to clarify that the agency must give the child contemporaneous notice of, and an opportunity to respond to, any alleged "affirmative act" before concluding that the child's UAC finding has been terminated, and that "affirmative acts" refer only to situations where the initial UAC determination was made in error, rather than where facts like the child's age change after the initial UAC determination.

Subtopic #4: Ensure Access to Protection for Children

Recent Attorney General opinions have sought to narrow access to asylum by suggesting categorically that asylum claims based on domestic or gang violence or membership in one's family group are not viable and overturning prior Board of Immigration Appeals precedents. *(See Topic #1 of the Humanitarian Protection Chapter for additional information).* These actions, which undermine access to protection for all asylum-seekers, are decidedly detrimental for children, who frequently have claims for protection based on persecution and threats they experienced based on their family ties, or domestic violence or abuse.

Special Immigrant Juvenile Status (SIJS) is a child-specific form of relief created by Congress that provides critical, lifesaving protection for children and youth who have been abused, abandoned or neglected by one or both parents and for whom it is not in their best interest to return to their countries of origin. The Trump administration has implemented multiple barriers for youth seeking SIJS, such as ignoring the 180-day adjudication deadline. Additionally, although SIJS provides a pathway to lawful permanent residence, children and youth with approved SIJS petitions currently face uncertainty and risk of deportation. This is due in large part to the limited annual availability of visas allowing them to apply to adjust their status to permanent resident. Government policies should give meaningful effect to the SIJS status and its protections for vulnerable youth.

Additional Trump administration measures, including the closure of the United States-Mexico border in response to the COVID-19 pandemic, have all but eliminated access to protection for children and asylum-seekers more generally. Through turnbacks and expulsions of thousands of children often within mere hours of their arrival at the U.S. border, these procedures deprive unaccompanied children of critical statutory protections provided by the TVPRA, including screening for protection needs, placement in full immigration court removal proceedings under 8 U.S.C. § 1229a, and the opportunity to have their asylum claims first considered by USCIS and then again in immigration court if not initially successful.

Priority Action #1: Rescind the Attorney General opinions in *Matter of L-E-A-* and *Matter of A-B-* and replace them with decisions affirming the availability of asylum claims based on family ties and persecution by non-state actors. *(See Topic #1 of the Humanitarian Protection Chapter for additional information).*

Priority Action #2: Rescind the Notice of Proposed Rulemaking titled "Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review," which dramatically undermines access to asylum and due process for unaccompanied children by undermining claims for asylum based on persecution by non-state actors and allowing immigration judges to adjudicate cases without children appearing in court. *(See Subtopic #2 of Topic #1 in the Humanitarian Protection Chapter for additional information).* Similarly, USCIS should reinstate and enhance the 1998 Guidance for Child Asylum Claims and 2009 Asylum Officer lesson plan to ensure fair and child-appropriate consideration of any claims related to gang violence, domestic violence and recruitment and trafficking by cartels.

Priority Action #3: USCIS should respect the 180-day adjudications deadline for each SIJS petition and grant deferred action and work authorization to youth with approved SIJS petitions, as is available to those with other humanitarian visas, until their permanent resident applications are adjudicated. *(See Priority Action #1 of Topic #1 in the Protections for Immigrant Survivors of Violence Chapter for additional information).* At the same time, EOIR should grant immigration judges and BIA members the authority to, and advise them to, continue, administratively close or terminate removal proceedings to allow for USCIS's adjudication of SIJS petitions and SIJS-based applications for adjustment of status. *(See Subtopic #2 titled, Advance a System for Deciding Children's Cases That Appropriately Addresses Children's Developmental Needs, Vulnerabilities and Best Interests, above).* The next administration should support congressional action to further safeguard SIJS-eligible youth through legislation that increases related visa caps, bars ordering or executing removal of youth seeking or granted SIJS and extends work authorization to SIJS beneficiaries waiting to apply for adjustment of status to permanent resident or awaiting adjudication of adjustment applications.

Priority Action #4: Publish for public comment a supplemental Notice of Proposed Rulemaking on the Proposed Rule on Special Immigrant Juvenile Petitions that was originally published in September 2011 and reopened for comment in October 2019. The supplemental NPRM should respond to earlier public comments, underscore the critical importance of SIJS relief and aim to

end recent policy positions and practices that have undermined access to this form of relief and that run counter to the underlying statute.

Priority Action #5: Rescind the Centers for Disease Control and Prevention order and related DHS guidance (otherwise known as the Title 42 expulsions), and resume statutorily required screening and processing of unaccompanied children pursuant to the TVPRA. Similarly ensure processing of all asylum-seekers consistent with domestic and international law. *(See the Humanitarian Protection Chapter for additional remedies for denial of legal relief under harmful Trump administration policies).*

Topic #2: ICE Interior Enforcement

This topic was drafted by Wendy Cervantes (CLASP), Juan Gomez (CLASP), Vanessa Meraz (CLASP), Cory Shindel (KIND), Mary Giovagnoli (KIND), Leah Chavla (WRC), Ursula Ojeda (WRC), Mina Dixon Davis (CDF), Naureen Shah (ACLU), Ruthie Epstein (ACLU), Denise Bell (Amnesty International USA), Charanya Krishnaswami (Amnesty International USA), Santiago Mueckay (Save the Children Action Network), Emily Butera (Open Society Policy Center), and Ashley Feasley (USCCB).

Interior immigration enforcement actions have historically harmed children in mixed-status immigrant families, and in recent years, that harm has become more acute due to the Trump administration's efforts to ramp up enforcement—both through individual arrests as well as massive raids—while simultaneously rolling back protections instituted by previous administrations specifically aimed at mitigating the damaging effects on children.

More than 5 million children live in a mixed-status family with at least one undocumented parent, and the majority are U.S. citizens. Interior immigration enforcement often separates children from parents whom the Department of Homeland Security (DHS) has detained or deported, resulting in short and long-term consequences to children's mental and physical health, economic security and overall development. Family separation represents one of the greatest risks to the health and well-being of children, especially in early childhood when children are physically, emotionally, and economically dependent on their parents. However, increased enforcement efforts have taken a toll on the mental and physical health of parents in immigrant families as well, which puts their children's development at risk. Parents who are detained or deported can face serious challenges in arranging the care of their children, in addition to the loss of an income to support their family's needs. Research has documented the critical importance to a child's healthy development of having a strong and stable connection with a parent or caregiver, as well as the toxic stress created by the constant fear of possible separation. That stress has contributed to a complete upheaval in the day to day lives of children, including becoming isolated from their community.

Moreover, because of the widespread and public nature of enforcement actions in the last few years, the harmful impacts of this stress are not limited to children in mixed-status families but extend to the 1 in 4 children who have an immigrant parent, including those whose parents have lawful immigration status. When a child with a detained or deported parent is in the child

welfare system, they also face significant challenges in being able to reunify with their parents due to often conflicting policies and lack of coordination between the child welfare and immigration enforcement systems.

The Trump administration's increased enforcement efforts and constant anti-immigrant policy announcements have resulted in increased fear and uncertainty among immigrant communities, leading undocumented immigrant parents to fear basic activities essential to their children's well-being, including going to the doctor or dropping off their children at childcare or school. The levels of anxiety and stress experienced by young children during these formative years can have serious and lasting effects on their physical and emotional development. In order to ensure that children are not needlessly separated from their parents or impacted by disruption to their daily routines, parents must first and foremost have the assurance of stability and protection. Immigration and Customs Enforcement (ICE) must significantly scale back enforcement actions as recommended in the *Interior Enforcement* Chapter (such as restoring previous enforcement priorities and expanding the use of prosecutorial discretion) as well as take actions to mitigate and document the harm to children who are present during a parent's arrest, consequently separated from a parent, or otherwise impacted by enforcement actions.

Subtopic #1: Minimizing Interior Enforcement Actions Against Parents, Legal Guardians and Caregivers and Preserving Parental Rights

ICE's current parental rights policy is set out in *Detention and Removal of Alien Parents or Legal Guardians* (Aug. 29, 2017). This is a revised version of a policy originally issued by the Obama administration, which the Trump administration watered down in many ways, most notably by removing language encouraging ICE personnel to apply prosecutorial discretion not to detain parents and caregivers. However, the current policy does contain important language on facilitating an apprehended parent's ability to make childcare decisions. The Trump administration most recently issued additional guidance on the directive in May of 2020, reiterating the 2017 changes, including the new language on parental choice regarding care of children.

Since initially issuing the parental interests policy in 2013, ICE has inconsistently applied it, with certain field offices and detention centers more willing to comply than others. When the issue of families caught between the immigration and child welfare systems was first identified, it was thought to be largely a consequence of two systems that did not understand each other or how to work together. The child welfare system moves on a specific timeline, with certain milestones, case plans and court dates that a parent must meet, and it is all but impossible to do so from detention or outside the country. Over time, advocates have reported that ICE is increasingly unwilling to take steps such as transferring a parent closer to child welfare proceedings or staying a parent's removal while a child welfare case was ongoing. In at least some instances, these practices appear less an unintended consequence and more an attempt to persuade parents to "choose" to give up their immigration case and be removed. To mitigate the harm of enforcement on parental rights, ICE should broaden and strengthen its policy and the next administration should hold ICE accountable for compliance. To mitigate harm to

children broadly, ICE should require officers to undergo training in how to deal with children present during an interior enforcement action.

Priority Action #1: ICE should ensure parents and legal guardians of minor children are not targets of immigration enforcement. ICE should make parents, legal guardians and primary caregivers of minor children eligible for a presumption of release, per the procedures regarding custody determinations in the *Custody and Alternatives Section of the Interior Enforcement* Chapter.

Priority Action #2: ICE should revise the policy memo *Detention and Removal of Alien Parents or Legal Guardians* to restore critical provisions that it cut from the original 2013 policy and to strengthen it. Key components should include:

- Designation of a headquarters-level point of contact/coordinator to facilitate parental rights and child welfare cases in cooperation with designated field-level parental rights points of contact
- Procedures for the apprehension of a parent, legal guardian or caregiver of a minor child:
    - ICE or a cooperating entity should inquire of each individual apprehended whether they are a parent, legal guardian or caregiver of a minor child.
    - ICE should prioritize release for a parent, legal guardian or caregiver regardless of whether a child is physically present at the time of a parent, legal guardian or caregiver's apprehension.
    - As soon as possible but not later than 2 hours after apprehending a parent, legal guardian or caretaker, ICE or a cooperating entity should:
        - Provide them multiple opportunities, through multiple methods, to contact a caretaker of their choosing including but not limited to at least 3 phone calls
        - Not call a local child welfare agency to assume custody of a child unless the parent, legal guardian or caregiver is unwilling or unable to arrange childcare of their choosing after receiving ample opportunity to make childcare arrangements
        - Notify the relevant local or state child welfare agency if ICE personnel believe a child is at imminent risk of serious harm
    - ICE or a cooperating entity should provide all parents, legal guardians and caregivers with contact information for:
        - child welfare agencies and family courts in the jurisdiction of apprehension and nearby jurisdictions; and
        - consulates, attorneys and legal service providers capable of providing free legal advice or representation regarding child welfare, child custody and immigration matters
    - Absent medical necessity, ICE or a cooperating entity should not move a parent, legal guardian or caregiver from the area of apprehension until care arrangements are made for the child and the parent, legal guardian or caregiver knows how to contact the child or child's caregiver

    - If a child is present at the time of a parent, legal guardian or caregiver's apprehension, ICE or a cooperating entity should allow the adult to:
        - Speak to, touch and comfort their child
        - Share information regarding care arrangements with the child
        - Communicate known medical illnesses, including chronic illnesses, to a caregiver or child welfare agency prior to separation
    - Absent medical necessity or extraordinary circumstances, ICE should place a parent, legal guardian or caregiver in a detention facility close to the child's place of residence and any child welfare proceeding and should not transfer them except to facilitate medical care or participation in court proceedings
- Procedures for the detention and removal of a parent, legal guardian or caregiver. *(See the Custody and Alternatives Section of Interior Enforcement Chapter for procedures regarding custody determinations and review by the new Office of Migrant Protection).* In cases when a parent, legal guardian or caregiver must be detained for any period of time:
    - Reevaluate custody on a monthly basis upon receiving information that a person in detention is a parent, legal guardian or caregiver of a minor child
    - Post information on the rights of detained parents, legal guardians and caregivers
    - Permit regular phone calls--including by video when possible—and contact visits with children, including outside of regular phone call and visitation hours if necessary
    - Provide free and confidential phone calls to child welfare agencies, family attorneys and family courts as often as is necessary to ensure that the best interest of a child, including a preference for family unity, can be considered in child welfare and family court proceedings
        - Provide contact information for child welfare agencies, family attorneys and family courts in housing units
        - Ensure that a parent or legal guardian is able to communicate with children's case workers and child and parent attorneys regularly and confidentially
    - Ensure that a parent or legal guardian can comply fully with all family court and child welfare agency orders impacting custody or guardianship of their child including but not limited to calls, visits, activities and classes required by case plans
    - Permit and facilitate parents' and legal guardians' ability to participate fully, and to the extent possible in person, in all family court proceedings and any other proceeding that may impact custody or guardianship of their child. If ICE cannot facilitate an in-person appearance, ICE should provide video or telephonic participation.
        - limited to calls, visits, activities and classes required by case plans
    - Ensure that detained parents and legal guardians can make longer term care arrangements for their children

        - Provide access to U.S. passport applications and other relevant applications to obtain travel documents for children
        - Afford timely access to consulates, family attorneys and notaries public for the purpose of applying for passports for children, executing guardianship agreements, purchasing airline tickets and making other arrangements for the long-term safety and care of children
        - Provide adequate time and opportunity before removal to obtain passports, apostilled birth certificates, travel documents and other necessary records on behalf of children if a parent or legal guardian would like children to accompany them on their return to their country of origin or join them later
        - Inform parents and legal guardians, their counsel, consulate and/or another relevant individual designated by the Field Office Director in agreement with the parent or legal guardian with information about when, how and to where they will be removed. Such notification should be provided with ample time to make travel arrangements for children
        - Permit a parent or legal guardian to share removal information with their consulate, children, a child welfare agency and/or a child's caregiver in advance of removal for the purpose of coordinating family reunification
    - If a removed parent or legal guardian provides ICE with verifiable evidence of a final hearing to terminate parental rights or legal guardianship, ICE or the new Office of Removal Order Review should grant humanitarian parole for the purpose of participating in that hearing
- Outreach - ICE should work with the U.S. Department of Health and Human Services (HHS) administration for Children and Families, child welfare and family law experts to develop methods for improving communication and collaboration with local and state child welfare systems
- Oversight - ICE should report to Congress twice per year on efforts to comply with any ICE policies on apprehension, detention and removal of parents, legal guardians and caregivers

Priority Action #3: The DHS, in conjunction with HHS and independent child welfare and family law experts, should develop and provide training on relevant portions of this policy and other relevant policies involving children to all ICE personnel and personnel of cooperating entities who come into contact with parents, legal guardians and caregivers in the course of enforcement actions, and to all ICE and detention facility personnel who regularly come into contact with detained parents, legal guardians and caregivers.

Subtopic #2: Protecting Sensitive Locations Critical to Child and Family Well-being from Enforcement Actions

The DHS, which oversees both ICE and U.S. Custom and Border Protection (CBP), has long standing policies that restrict immigration enforcement actions in certain "sensitive locations," including places of worship, schools and health care facilities. ICE and CBP issued their most recent policies about sensitive locations in 2011 and 2013, respectively. ICE and CBP issued two

sets of Frequently Asked Questions (FAQs) in 2018 and 2016 to further clarify the types of locations the agency considers "sensitive." In an effort to ensure that education agencies were aware of the policy, the Department of Education also issued a fact sheet in January 2017 about the policy as well as how to file complaints. However, reports of enforcement actions taking place near schools, churches, hospitals and other locations call into question whether ICE and CBP consistently follow these policies. Moreover, the policies do not extend protections to other locations that are critical to immigrants' safety and security, including courthouses.

Under the Trump administration, research has documented that parents are reluctant to seek out medical attention for their children or even drop them off at childcare or school because of fear of encountering ICE agents and risking detention and deportation. A 2018 report found that child care and early education providers around the country are witnessing increased incidences of ICE arrests in parking lots or en route to child care facilities and schools. There have also been accounts of ICE arresting parents on the way to seek health care for their children. Around the country, increased incidences of ICE arresting individuals in courthouses have also been documented. While the Trump administration issued additional guidance clarifying that ICE will generally avoid enforcement actions in courthouses dedicated to non-criminal proceedings (such as family court and small claims court), the guidance falls short as many of these types of proceedings take place in the same building as criminal proceedings. The COVID-19 pandemic has further revealed the dangerous consequences of individuals avoiding medical treatment because of fears of enforcement, at great risk to the health of individuals, their families and the broader community.

In order to ensure that children's daily routines and access to critical services are not compromised due to fears related to immigration enforcement, it is necessary to both expand and clarify (and ultimately codify) the existing policy and improve accountability measures.

Priority Action #1: Conduct a comprehensive review of practices and procedures that have been inconsistent under the existing sensitive locations policy to document violations, identify responsibility, recommend penalties and identify acts of restoration. An investigative body (potentially the DHS Office of Inspector General or OCR) should investigate reports of sensitive location violations to determine how such violations occurred and make recommendations to ensure violations cease immediately. If the investigation finds that violations of sensitive locations policies resulted in consequential actions such as an individual's detention or deportation, such cases should be further investigated to identify options to ameliorate or reverse such actions.

Priority Action #2: Expand the existing ICE and CBP policies to restrict enforcement actions in additional sensitive locations and in areas *near* sensitive locations. The policy should specifically state that agents may not conduct enforcement actions within 1,000 feet of a sensitive location. The policy should clarify that the following are included in the definition of sensitive locations:

- Any medical treatment or health care facility, including any hospital, doctor's office, accredited health clinic, emergent or urgent care facility, community health center or site providing testing or vaccines;
- Public and private schools (including preschools, primary schools, secondary schools, postsecondary schools and colleges and universities), sites of early childhood education programs that meet the definition under section 103 of the Higher Education Act of 1965 (20 U.S.C. § 1003), other institutions of learning such as vocational or trade schools and other sites where individuals who are unemployed or underemployed may apply for or receive workforce training;
- Any scholastic or education-related activity or event, including field trips and inter-scholastic events;
- Any school bus or school bus stop during periods when children are present on the bus or at the stop;
- Churches, synagogues, mosques and other places of worship, such as buildings rented for the purpose of religious services;
- Sites of funerals, weddings or other public religious ceremonies;
- Sites during the occurrence of a public demonstration, such as a march, rally, or parade.

While the current policy states that the list of locations is not exhaustive, ICE and CBP should specifically add additional locations, including but not limited to:

- Locations where emergency services providers offer shelter or food
- Locations of any organization that:
    - Assists children, pregnant women, victims of crime and abuse or individuals with significant mental or physical disabilities, including domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers and victims' services providers; or
    - Provides disaster or emergency social services and assistance, or services for individuals experiencing homelessness, including food banks and shelters.
- Any federal, state or local courthouse, the office of an individual's legal representative and probation offices;
- Congressional district offices;
- Public assistance offices, including locations where individuals may apply for or receive unemployment compensation or report violations of labor and employment laws;
- Social security offices;
- Indoor and outdoor premises of departments of motor vehicles.

Priority Action #3: Apply the sensitive locations policy to locations in the immediate vicinity of the international border, including the functional equivalent of the border, in addition to the interior. Access to hospitals, churches, schools and other sensitive locations in border and coastal communities should be equally protected from enforcement actions.

Priority Action #4: Improve accountability by clearly assigning enforcement of the policy to the DHS Office of Civil Rights (OCR), instituting regular reporting requirements, modifying the process of reporting violations to be more accessible and transparent and outlining methods of

recourse for immigrants whom DHS apprehends in violation of the sensitive locations policy. OCR should collect and investigate reports of violations of the sensitive locations policy and issue regular reports to Congress on ICE and CBP's implementation of the policy. OCR should ensure that all ICE and CBP employees receive regular training in compliance with the requirements of the policy.

After any enforcement action conducted at a sensitive location, ICE and CBP should submit a report to OCR outlining:

- The date, site, state and local political subdivision (city, town or county) in which the enforcement action took place;
- The component of the agency responsible for such action;
- The description of the intended target of such enforcement action and the number of targeted individuals, if any, arrested or taken into custody through such action;
- The number of collateral arrests, if any, from such action and the reasons for each arrest;
- A certification of whether:
    - The enforcement action was focused on the sensitive location, and if so, documentation of attempts to apprehend or interview the individual(s) in other settings prior to focusing on the sensitive location; or
    - Officers or agents were subsequently led to or near the sensitive location, and if so, whether the location administrator was contacted prior to, during, or after such action.

To promote reporting transparency, DHS OCR should contract with a trusted third party (possibly community-based organizations or legal service providers) to collect reports of violations. If an enforcement action is carried out in violation of the policy:

- No information resulting from the enforcement action may be entered into the record or received into evidence in a removal proceeding resulting from the enforcement action (which may require creation of a mechanism to remove such information); and
- The immigrant who is the subject of such removal proceedings may file a motion for the immediate termination of the removal proceeding.

Priority Action #5: Increase awareness of the policy by disseminating fact sheets and FAQs on the policy in partnership with other relevant federal agencies, such as the Department of Education, HHS, and the Department of Justice to ensure that local agencies are aware that they fall under the policy and know how to report violations.

Subtopic #3: Mitigating the Harm to Children Caused by Worksite Enforcement

Following the operation of large-scale worksite raids under the Bush administration, DHS created guidelines detailing how to prioritize the safety of children caught in the middle of immigration enforcement actions, titled, *Guidelines for Identifying Humanitarian Concerns Among Administrative Arrestees When Conducting Worksite Enforcement Operations*. Interior immigration enforcement of this sort did not entirely dissipate, but it did largely subside after

the implementation of these guidelines. The Obama administration expanded the guidelines to address actions impacting at least 25 individuals versus 150, and the practice of large-scale worksite raids ceased. The Trump administration has revived the use of massive worksite raids as a means of carrying out its immigration enforcement priorities.

Under the Trump administration, large-scale worksite raids have increased in both frequency and in number of arrests per enforcement action. In April of 2018, ICE conducted the largest worksite raid in over a decade, terrorizing a Tennessee community and arresting over 100 people. The number of people arrested in large-scale worksite raids subsequently climbed higher and higher—146 arrests in Ohio, 284 arrests in Texas, and in the most recent series of worksite raids, ICE detained nearly 700 people in Mississippi in August of 2019. Many of the individuals ICE arrested in these raids were parents. The highly publicized raids created significant trauma for children, many of whom continue to endure separation from detained or deported parents and/or adverse mental health effects.

Research on worksite raids has documented the devastation that these large-scale operations have on children, their families and communities. An initial 2007 report found that the harmful impacts of large-scale worksite raids on children are both immediate and long-term. As a result of public outcry, a set of humanitarian guidelines were issued and later expanded. A 2010 report also found that the sudden loss of one or both parent's incomes in a household due to detention or deportation exacerbated health and economic hardships for children and their families, including housing instability and food insecurity. Finally, a 2020 report on large-scale worksite raids conducted under the Trump administration found that families and communities remained shattered months, and even years, after workplace immigration raids—with children bearing the brunt of the trauma. The effects of family separation on children manifested in behavioral changes including difficulty sleeping and eating, excessive crying, clinginess to parents and aggressiveness, and these changes were most pronounced in children who had witnessed a parent's arrest.

ICE must commit to all worksite enforcement actions and investigations, as recommended in the *Worksite Enforcement Section of the Labor and Employment Chapter.* In the event that worksite enforcement actions are deemed necessary, ICE must strengthen previously issued humanitarian guidelines to minimize the harm caused to children.

Priority Action #1: Stop the practice of large-scale worksite immigration enforcement, prioritize alternatives such as labor standards enforcement and take steps to address the harm experienced by workers and their families due to worksite raids under the Trump administration, such as terminating pending removal proceedings and identifying other forms of immigration relief, as outlined in the *Worksite Enforcement Section of the Labor and Employment Chapter.*

Priority Action #2: Establish humanitarian changes to worksite raids procedures so that, in the event that there are no alternatives to a worksite enforcement action, guidelines will serve to mitigate harm to children and other vulnerable populations. DHS should issue a memo that

establishes apprehension procedures to be followed in any immigration-related enforcement activity detaining more than 25 people, including to:

- Develop a comprehensive plan to identify detainees who may belong to a vulnerable population.
- Notify social service agencies of immigration enforcement activity no later than 24 hours in advance (including childcare centers, schools, and child protective services).
- Provide a certified interpreter for the languages spoken by the population targeted by the immigration enforcement activity.
- Allow nonprofits, organizations and attorneys to offer free legal services at the time of arrest in addition to providing a list of available free or low-cost legal services in the region where the enforcement action occurs.
- Provide/permit access to a telephone.
- Read, in the language that they understand, detained individuals their rights—right to remain silent, right to counsel at no expense to the government and advisal that any statement made may be used against them in a removal or criminal proceeding.
- Release detainees determined to be of a vulnerable population no later than 24 hours after apprehension.
    - A member of a vulnerable population includes any of the following:
        - Children age 18 or younger.
        - Individuals who have a disability or have been determined by a medically trained professional to have medical or mental health needs.
        - Pregnant or nursing women.
        - Individuals who are detained with 1 or more of their children, and their detained children.
        - Individuals who provide financial, physical, and other direct support to their minor children, parents or other dependents.
        - Individuals who are at least 65 years of age.
        - Victims of abuse, violence, crime or human trafficking.
        - Individuals who have been referred for a credible fear interview, a reasonable fear interview or an asylum hearing.
        - Individuals who have applied or intend to apply for asylum, withholding of removal or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
        - Any group the DHS Secretary designates as a vulnerable population.
- Provide detainees with adequate food and water and allow reasonable restroom access.
- Provide appropriate emergency medical care if an emergency medical condition is identified.
- Make sure children are not present when interrogating or screening individuals.
- Do not interrogate, arrest or detain any children with their parent nor request that children translate for other individuals during the enforcement activity.

For those who must be detained, apply the procedures outlined above in the parental interest directive section to all parents, legal guardians and primary caregivers who are determined ineligible for release to ensure their parental rights.

Topic #3: Mitigating the Dangers of the Journey

This topic was drafted by Santiago Mueckay, (Save the Children Action Network), Cory Shindel (KIND), Mary Giovagnoli (KIND), Leah Chavla (WRC), Ursela Ojeda (WRC), Mark Engman (UNICEF), Rhonda Fleischer (UNICEF), Eitan Peled (UNICEF), Denise Bell (Amnesty International USA), Charanya Krishnaswami (Amnesty International USA), Mario Bruzzone (USCRI), and Ashley Feasley (USCCB).

Widespread gang and criminal violence, gender-based violence and deep-rooted poverty and corruption have driven children and families to undertake unsafe migration routes in order to seek safety and protection in the United States. After the harrowing journey to the United States, these children and families are often met by even more dangers at the border—all while children's rights continue to be violated.

The U.S. government has not only blocked access to asylum protections but has also blocked foreign aid aimed at addressing the root causes of unsafe migration. In addition, it has supported hardline positions on immigration within sending and receiving countries while ignoring other developments that undermine democracy, such as the decline in anti-corruption initiatives. By reducing the funding for programs that tackle the root causes of the crisis, the U.S. government has only exacerbated the already dire situation in these countries.

The COVID-19 global pandemic has further limited mobility across the region and put children and families at grave risk as they are often held in detention centers, shelters or encampments that lack the proper hygiene and space needed to properly prevent the spread of the virus. Additionally, many countries including the United States have closed their borders to migrants and asylum-seekers, often trapping children and families in dangerous situations in countries that have already strained protection and healthcare systems.

Subtopic #1: Attempting to Remedy the Root Causes of Unsafe Migration

Systemic violence, gang warfare, and deep-rooted poverty and corruption in various countries have resulted in tens of thousands of children and families undertaking a dangerous journey to seek safety and protection in the U.S. Historically, the U.S. government has provided both monetary and programmatic assistance and humanitarian aid to these countries. However, under the current administration this aid, aimed at addressing these root causes of the migration crisis, has dried up. Instead, the U.S. government has entered into bilateral agreements with these countries meant to limit the flow of migrants and asylum seekers. However, one cannot simply throw money at these problems to make them disappear, therefore, the U.S. government's assistance should target the underlying root causes directly in order to create durable solutions for the crisis.

Priority Action #1: Restore U.S. assistance to Central American countries. The U.S. government should require the Department of State to release humanitarian assistance that Congress has previously allocated. The State Department should provide this targeted assistance in a manner that decentralizes the aid, retains high standards for fighting graft and corruption and focuses on building long-term solutions at the local level. The State Department should actively enforce

the conditions in State, Foreign Operations law that insist that governments make progress in addressing corruption, protecting human rights and human rights defenders, ensuring accountability for security force violations and strengthening the rule of law. The U.S. government should remove conditions tied to limiting migration or free movement as preconditions for aid, including by:

- Not using conditional aid or the withholding of aid as a means to deter those fleeing violence, persecution or dangerous circumstances, particularly families and unaccompanied children.
- Not tying aid to reporting requirements on the drivers of migration. The U.S. government should not condition aid on outmigration falling below certain absolute numbers or proportions of the population.
- Not using aid as a way to coerce cooperation on migration policies or bilateral agreements that aim to limit migration or make it easier to deport individuals to the receiving country.

U.S. foreign aid should support development strategies that address the specific needs of women and children as they relate to poverty and access to economic opportunities. *(See the Humanitarian Protection Chapter for additional information).* The U.S. Agency for International Development (USAID) should update its Central America Strategy to include more child-specific programs, focusing on local providers and community input. Currently, USAID implements a wide range of programs in Central America that support the Central America Strategy's three pillars: security, prosperity and governance. USAID should add a fourth pillar focused on the protection of human rights, as there is an undeniable need to protect the rights of vulnerable populations in the region.

Priority Action #2: Increase the capacity of targeted programs in countries of origin in order to provide immediate assistance as well as durable solutions**.**

The U.S. government should reinforce and expand community-based violence prevention programs and support for survivors of violence, focusing on:

1. Gender-based violence prevention programs targeting children, youth, families and communities.
    - Funding and strengthening a network of shelters with staff and facilities equipped to handle the acute security needs of women and girls.
    - Expanding public education and awareness-raising campaigns to de-normalize sexual and gender-based violence.
    - Improving states' and localities' capacity to investigate and prosecute cases of intra-familial violence, sexual violence and femicide, including the improvement of crime scene investigation and the development of forensic evidence capabilities.
    - Ensuring that any and all U.S. support to law enforcement agencies in the region includes training on non-discrimination practices, appropriate procedures for handling sexual and gender-based violence cases and working with survivors.

    - Supporting initiatives to prevent and address discrimination against women and girls in law enforcement, courts, and in practice through laws addressing domestic violence, sexual assault, child marriage and other forms of gender-based violence.
2. Gang violence prevention programs targeting affected communities and at-risk youth.
    - Promoting reintegration and readjustment programs for youth and children seeking to leave gangs.
    - Creating or expanding job and vocational training for these individuals through a focus on sustainable employment opportunities.
    - Providing family support programs in early childhood to ensure children grow up in violence-free homes.
3. Social services networks for violence survivors including specialized medical and mental health services, economic assistance, and safe shelters for individuals, families and children, including safe options for those targeted by gangs and other organized criminal groups, and accompaniment during and after the reporting and judicial process.

The U.S. government should ensure a higher investment in education, including by:

- Supporting alternative education modalities and livelihood options for young people.
- Developing networks of local schooling to reduce risks of violence and dangers associated with long-distance travel.
- Assisting in building and monitoring quality control mechanisms to ensure schools are places in which staff and students feel welcome and safe.

The U.S. government should improve and expand child protection programs, including by:

- Building up and decentralizing government child welfare agencies, including developing robust monitoring systems within each agency.
- Improving child protection capacity by supporting migrant shelters and civil society organizations.
- Strengthening formal communication and institutional coordination between various protection agencies and across various countries.
- Providing more holistic programs to support families in crisis, including support for the reintegration of repatriated children in those circumstances where it has been determined that it is both safe and in the best interests of the child to return. *(See the Safe Repatriation Section of Children's Chapter).*

The U.S. government should support the strengthening and decentralizing of judicial systems, including by:

- Supporting the investigation and prosecution of crimes of violence—particularly sexual and gender-based violence—against children.
- Providing child-specific training for law enforcement, judicial and other officers.
- Implementing criminal justice reform that permits and encourages alternatives to detention for young offenders.

The U.S. government should expand economic development for local communities to mitigate root causes that drive violence and poverty and the unsafe migration of families and unaccompanied children.

(See the Humanitarian Protection Chapter for additional information).

Subtopic #2: Ensuring Protection en Route

As more and more families make their way north trying to escape violence, corruption, and poverty, child protection should be at the forefront of the discussion. The violence and danger that children and families experience en route can be just as traumatizing as the ones they were trying to escape in the first place. The U.S. government must work together with Central American countries to ensure that children and families are provided with the necessary humanitarian protections and support services required. It must work to strengthen already existing protection systems in these countries and encourage cross-country collaboration to allow for better tracking and processing of vulnerable populations.

Priority Action #1: Increase capacity in transit countries to provide humanitarian protection and support services to unaccompanied children.

- Work with transit countries to create/improve the appropriate social programs to deal with unaccompanied children in transit, including safe open-door shelters, foster family settings as an alternative to shelters, health care, psychological and social services and identification of protection needs.
- For children in the care or custody of the transit country, ensure access to legal protections, including know your rights presentations.
- Ensure the existence of alternatives to detention for unaccompanied children.
- Harmonize and standardize the "best interest of the child" standard for unaccompanied children across the various transit countries and the United States.
- Develop enforceable non-refoulement standards for unaccompanied children.
- Develop enforceable standards for the safety and confidentiality of unaccompanied children's medical records.
- Increase training on how to screen and identify vulnerable migrant children. Ensure that all children are provided with adequate child-friendly information on their rights to access asylum.
- Increase access to medical and mental health services for migrants who are victims of violence, including sexual violence.
- Address corruption and abuses against migrants by migration agents, police and military officials.

Priority Action #2: Address protection needs for unaccompanied children in Mexico

- Support expansion of capacity throughout Mexico to house and care for children on the move by strengthening and streamlining institutional protections for children.
- Assist the Mexican government in building the capacity of the Special Prosecutors for Crimes Against Migrants and providing oversight of their work to ensure migrants can report crimes committed against them in Mexico and access justice and protection.

- Assist the Mexican child protection agency's (Sistema Nacional para el Desarrollo Integral de la Familia, or DIF) national office in developing national standards of care for unaccompanied child migrants in Mexican shelters, in conjunction with counterparts in the Office of Refugee Resettlement.
- Assist DIF state and municipal offices in implementing national standards.
- Assist the Mexican government in building capacity to train state and municipal officials to conduct best interest determinations for all children in custody. Ensure that no child is deported or returned without first receiving a best interest determination and ensure that all children are made aware of all options, including eligibility for protection.
- Ensure the existence of alternatives to detention (including alternatives to closed-door shelters) for unaccompanied child migrants, following Mexican law prohibiting children from being placed in detention facilities.
- Assist the Mexican government in increasing capacity in child-appropriate shelters run by DIF and civil society organizations to ensure that it complies with laws that prohibit holding children in immigration detention.
- Provide ongoing training for the state offices of the Ombudsman for the Protection of Girls, Boys and Adolescents (*Procuraduría de Protección de las Niñas, Niños y Adolescentes*) in best practices for rights claims and protection claims from unaccompanied child migrants, potentially through collaboration with UNICEF.
- Improve coordination between DIF offices, the Instituto Nacional de Migración (INM), and other appropriate agencies via the Undersecretary of Human Rights, Migration and Population in the *Secretaría de Gobernación,* particularly the Migration Policy Unit.
- Ensure access to detention centers for civil society organizations to ensure migrants and refugees in custody receive information about rights and legal options and to prevent human rights abuses in detention centers and shelters.

Priority Action #3: Coordinate efforts with the Mexican government to ensure that children and families have meaningful access to U.S. protection, including ending practices that discourage or deny children from approaching or accessing the United States

- Work with the Mexican government to end practices along Mexico's southern border that prevent children and families from accessing protection in Mexico or the United States.
- Reverse the "Migration Protection Protocols" and other programs that lead to extraordinary hardship and danger for children and force some children to continue their journeys without their parents.
- Re-establish and improve the Central American Minors Program (CAM) as an in-country processing mechanism for Central American migrant children and their families to be resettled in the United States**.** *(See Subtopic #4 of the Refugee Resettlement Section of the Humanitarian Protection Chapter for additional information).*
- Develop a new processing model, data management system, and better-equipped and better-designed facilities to reflect the increasing percentage of unaccompanied children and families within the total number of arrivals.
- As recommended by UNHCR, amend the forms used to screen Mexican unaccompanied children.

    - Expand Form 93 and Form I-770 so they are not simply yes or no questions, clarify instructions, and provide appropriate training and guidance on the forms for the child welfare professionals who would fill them out.
- Establish a separate command structure within U.S. Customs and Border Protection (CBP) so that child welfare professionals, while working directly with staff at their assigned facility/duty station, are ultimately reporting to this separate structure.
- Use cultural mediators to ensure child-sensitivity, so that reception may consider the circumstances of the child based on their background and culture.
- Ensure medical providers are available on-site at all CBP facilities.

Topic #4: Office of Refugee Resettlement (ORR) Unaccompanied Children Program

This topic was drafted by Jennifer Nagda (Young Center), Mary Miller Flowers (Young Center), Miriam Abaya (First Focus), Cory Shindel (KIND), Mary Giovagnoli (KIND), Mina Dixon Davis (CDF), Naureen Shah (ACLU), Mark Engman (UNICEF), Rhonda Fleischer (UNICEF), Eitan Peled (UNICEF), Denise Bell (Amnesty International USA), Santiago Mueckay (Save the Children Action Network), Basel Moussly (LIRS), Lorie Davidson (LIRS), Ashley Feasley (USCCB), Diane Eikenberry (WRC), Leah Chavla (WRC), Laura Belous (FIRRP), Azadeh Erfani (NIJC), Nathan Bult (Bethany Christian Services), Mark Greenberg (MPI), and Stephanie Heredia (MPI).

Until 1997, there were no laws governing the custody and release of children in immigration custody. Together, the 1997 Flores Settlement Agreement and Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 set standards for the care of immigrant children in government custody based on fundamental child welfare principles—particularly, based on the principles that children belong with their family or in family and community-based settings and that detention is harmful for children. Additionally, in 2002, Congress transferred the duties of care and custody of unaccompanied children to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS), as HHS has child welfare and refugee services expertise.

Under the Flores Settlement Agreement and the TVPRA, ORR is obligated to ensure children's prompt release to family. While children are in its custody, ORR must place children in the least restrictive setting in their best interests and provide them with certain services. Over the years, ORR has deviated from its child welfare mandate by coordinating with immigration enforcement agencies, using massive congregate care facilities that are inappropriate for children and creating barriers to reuniting children with their family who, with support, are often best situated to care for children. ORR must restore its mandate of child welfare by first and foremost ensuring unaccompanied children are released to family and other sponsors as required by law, after making timely determinations of safety that do not unduly prolong the child's detention. ORR must also ensure that children in its care are truly in the least restrictive setting in their best interests (family and community-based settings), and have access to services to promote their safety and well-being in custody and upon release, consistent with domestic and international child protection principles.

Subtopic #1: Prompt Release from Custody

Congress transferred the care of unaccompanied children to ORR because it recognized that HHS has expertise in child welfare and refugee populations and therefore is best positioned to temporarily place children in child-appropriate settings and provide them with services until the children can be released to their own families. However, a child's stay in ORR custody is meant to be very short term—only as long as it is necessary for ORR to identify family that can care for the child. This is required by law—the Flores Settlement Agreement establishes a "general policy favoring release." This presumption of release is based on social science research concluding that families provide the best care for children, and every delay of release increases the harm to children and is not in their best interests.

For children who enter ORR custody close to the age of 18, there is the risk that they will "age out" of ORR custody and be transferred to ICE detention. However, the TVPRA specifically mandates that ICE consider the least restrictive setting for these children, rather than taking them into Immigration and Customs Enforcement (ICE) detention. ORR has a role in ensuring that children at risk of turning 18 in its custody can be in a family- or community-based placement. For children at risk of turning 18, ORR should begin post-18 planning in time for children to be released to appropriate community placements before their birthday.

Priority Action #1: ORR should rescind the May 2018 Memorandum of Agreement with the Department of Homeland Security (DHS) and clarify with DHS that the February 22, 2016 Memorandum of Agreement between the Departments sets the framework for future coordination and information sharing between the agencies. ORR should amend prior Memorandum of Agreement with DHS to prohibit DHS's access to ORR significant incident reports (SIRs). ORR should disseminate these changes to care providers and potential sponsors through updates to the family reunification packet, the Unaccompanied Alien Child (UAC) Manual of Procedures (MAP), and a clear multilingual update on the ORR website.

Priority Action #2: ORR should expand the 30-day review of placement for children in secure facilities required by the TVPRA to children in all settings within 30 days of the new administration. After the review, ORR Federal Field Specialists (FFSs) should proceed with a child's reunification with family or provide written justification for the child's continued placement in ORR. FFSs should provide that justification to the child, the child's legal service provider and the independent child advocate. All children should then have the right to challenge their continued custody with ORR in Flores bond hearings. ORR should file a child's request for a Flores bond hearing within 2 business days with the immigration court and provide notice to the child's legal service provider and independent child advocate. Children seeking release should have appointed legal counsel, an independent child advocate and a full copy of their ORR file, including weekly and monthly administrative records pertaining to their custody review. Flores bond hearings should occur before a neutral arbiter (the immigration judge), and ORR should bear the burden of proving that it is in a child's best interests to remain in custody. Protocols must be in place to limit the use of children's confidential information including mental health records in these hearings. The immigration judge must consider the child advocate's best interests recommendation in the proceeding. The immigration judge's

order should be binding on ORR and must apply the best interest of the child standard. *(See Subtopic #2, Priority Actions #3 and #5 below for a similar process to challenge placement in restrictive settings).*

Priority Actions #3: ORR should update Section 2 of the UAC MAP to clarify that a child's mental or behavioral health needs cannot be the sole reason for delaying a child's release to a sponsor. Rather, case managers and FFSs should refer children with mental and behavioral health needs to appropriate services in the community upon release, though the agency cannot prohibit release solely because post-release services are not yet in place.

Priority Action #4: ORR should amend sections 2.2.1 and 2.2.4 of its Policy Guide to return to the 2016 standard, which does not require a "bona fide pre-existing relationship" for a child to be released to a distant relative or unrelated adult, when ORR can conclude that the relationship with the child or child's family is legitimate.

Priority Action #5: ORR should amend section 3.3.2 of its Policy Guide to direct care providers to begin creating concrete post-18 plans for children once they reach the age of 17 and a half, including investigation into organizational sponsors and necessary social support services. ORR should take every possible step to ensure the child's safe release to a sponsor and must consider the possibility of ICE detention and the impact of ICE detention on the child in evaluating the child's best interest and post-18 plans. Additionally, care providers must begin to coordinate with DHS to ensure children's release on their own recognizance should a release to an organizational sponsor fall through. Note that DHS should already be operating on a presumption of release for children aging out of ORR custody. *(See Subtopic #1, Priority Action #3 of the Custody and Alternatives Section in the Interior Enforcement Chapter).*

Priority Action #6: Upon release from custody, including circumstances of repatriation, ORR should provide a packet of information that details the child's medical needs, educational progress and any other relevant data for the child's well-being post-release. (*See the Safe Repatriation Section of the Children Chapter for further details about information to be given to the child upon repatriation).*

Subtopic #2: Appropriate Placement for Children

Under the Flores Settlement Agreement and the TVPRA, the government must place children in the "least restrictive setting" in that child's best interests. Despite this mandate, ORR has rapidly increased its use of shelters from housing as many as 200 children and up to 1,400 children in a single facility. In the U.S. child welfare and juvenile justice systems, there has been a long trend towards the use of family- and community-based settings for children. Congress's passage of laws like the Family First Prevention Services Act confirms its stance that family is the best setting for children. The Act limits the use of federal funds for childcare institutions that house more than 25 children—funds distributed through another bureau within HHS. This trend is due to years of social science research showing that the structure and regulation required in large facilities make them inherently inappropriate for children, especially children with behavioral difficulties or mental health needs. Instead, family- and community-based

settings allow children to develop personal, trustworthy adult relationships in stable long-term environments that allow them to thrive.

ORR contracts for long-term foster care (LTFC) placements for children who are expected to have a protracted length of stay in ORR custody due to the lack of a viable sponsor. These settings allow children to live in a family-based setting or extended care group homes as their immigration case proceeds or until they turn 18. For children who face prolonged time in custody, LTFC is in fact the least restrictive placement in the child's best interests. However, there is insufficient capacity for LTFC, and it is common for children to be on a waitlist for 6 to 9 months before getting approved for LTFC. For these children, prolonged custody hinders timely access to counsel, increases the likelihood they will experience trauma, and makes it more likely that ORR will unnecessarily transfer them to more restrictive settings.

ORR should provide immigrant children with the same care that the government provides to U.S. citizen children and ensure that the primary model of care for immigrant children are small, community-based settings that include temporary foster care in family settings, group homes or small shelters. Unaccompanied children without a sponsor should be able to have the same family-based, safe placement as other children as they pursue their immigration cases. Rather than using large unlicensed facilities to respond to low permanent capacity and increasing numbers of arriving children, ORR must also ensure that all facilities where it places children are licensed.

Children with disabilities face particular barriers in government custody. Because ORR shelters lack the resources to provide children with the care they need, children with mental health needs are often transferred, or "stepped-up," to residential treatment centers (RTC), staff-secure or secure detention centers. These step-ups risk further damaging children's mental health, as restrictive institutional environments increase the trauma of detention. The step-ups also segregate children with disabilities from other children in violation of Section 504 of the Rehabilitation Act instead of putting them in the most integrated setting appropriate to their needs. ORR should only use restrictive settings for children when it is the least detrimental alternative—that is, when there is no less restrictive setting available to address the child and/or community's need for safety.

ORR also places some children in highly restrictive settings—including in juvenile jails. Other children in those facilities have been adjudicated delinquent by a judge in a court proceeding, but there is no such evaluation—with its attendant substantive and procedural protections for children ORR places in these facilities. ORR should ensure the non-discrimination of immigrant children by providing them similar safeguards to those afforded to U.S. citizen children when considering whether to place them in a secure setting.

Priority Action #1: The Assistant Secretary for the administration for Children and Families (ACF) should issue a directive to ORR to develop a strategic plan to build its placement capacity for transitional foster care, LTFC and shelter facilities that are 25 or fewer beds, consistent with

standards for children in child welfare proceedings. ORR should develop the plan within 120 days of the next administration. The plan should include at least the following:

- A public awareness campaign regarding actions ORR is taking to correct the actions of the last administration, the proper role of ORR, the need for children to be in family and community-based settings, and how families and small group homes can play a role in providing short-term temporary placements for children until they are released to families.
- Grant incentives for foster care agencies and small group homes that have experience providing care for children. ORR should also consider a funding structure whereby foster care placements remain open even when ORR has few children in care.
- Recruitment plans for both foster care families and small group home providers, modeled after the 5-year, comprehensive Child and Family Services Plans that states must submit to the Children's Bureau. Such plans should include:
    - A description of the needs of immigrant children
    - Diverse methods of disseminating information
    - Strategies to find placements near health, developmental, therapeutic and legal service providers
    - Strategies to recruit providers with staff from diverse cultural, racial and economic communities, and
    - Strategies for dealing with linguistic barriers.
- Increased consideration for placing children in facilities near their prospective sponsors
- A review of the use of influx and secure facilities and an examination into ending the use of both types of facilities

In developing its strategic plan, ORR should consult with the following stakeholders:

- Children currently or formerly in the ORR system
- Foster families currently licensed to care for unaccompanied children
- Staff involved in training and licensing foster families for unaccompanied children
- Staff of small group homes currently contracted by ORR
- ORR staff involved in data collection
- ORR stakeholders, including legal and social service providers, TVPRA-appointed child advocates, and other non-profit organizations working with children currently or formerly in ORR custody.

Priority Action #2: ORR should expand LFTC beds for any child facing a stay of more than 2 months and eliminate "wait lists" for children eligible to enter LTFC. ORR should eliminate the requirement that the child must be deemed "relief-eligible" before transfer to LTFC, as many children are unable to disclose facts that would demonstrate their eligibility for protection while in ORR custody. ORR should eliminate the requirement that a child be younger than 17 years and 6 months to be eligible for transfer.

Priority Action #3: In the expanded 30-day review of children's placements (see Subtopic #1, Priority Action #3 above for more details) where ORR recommends continued custody and the child is in a placement larger than 25 beds, an RTC, a staff secure placement or secure setting,

ORR must either transfer the child to a less restrictive and smaller facility setting, or provide written justification for the child's continued placement in their current setting. In conducting this review, ORR should take into consideration the child's best interests, including the child's wishes. ORR should provide any decision to continue the child's placement in their current setting to the child in writing, and the child may obtain review of the decision by the ACF Assistant Secretary. ORR should provide written copies of these decisions to the child's legal services provider, who may advocate for their client regarding placement, and to the independent child advocate. ORR should also provide the review to the child and the child's sponsor in a language and manner the child and sponsor understand. ORR should fund and appoint independent child advocates to children in any RTC, secure or staff-secure placement.

Priority Action #4: ORR should engage in a comprehensive study of alternatives to "influx" placements and strategies to end their use altogether. Until then, ORR should immediately amend sections 1.3.5 and all of section 7 of the Policy Guide, and any other provisions of the Policy Guide pertaining to or bearing upon the use of influx placements or the placement, release or transfer of children from these facilities. These amendments should incorporate the following:

- At the point of onboarding/operationalization, the influx facility must be in compliance with staffing ratio requirements, phone call access and the standards under the Prison Rape Elimination Act of 2003 (PREA) that apply to permanent, licensed facilities.
- Within 90 days of onboarding/operationalization, the facility must be in compliance with the standards set forth in Exhibit 1 of the Flores Settlement Agreement, regardless of the status of the Flores Settlement Agreement; and any influx facility in operation for a period of more than 90 consecutive days must be licensed by the state in which the influx care facility is located.
    - The HHS Secretary may waive compliance with the requirements under the Flores Settlement Agreement for a period of not more than 30 days, with no more than two consecutive waiver periods.
    - The Secretary may waive compliance with state licensing for a period of not more than 30 days, with no more than three consecutive waiver periods, with justification to Congress that either the agency is making ongoing efforts to obtain such licensing, or if it cannot obtain such licensing, an explanation as to why licensing is not possible and why the agency chose the particular influx care facility and considers it operationally necessary.
    - The Secretary should ensure that each staff member of an influx facility who will have contact with unaccompanied children has passed to a background check conducted by the Federal Bureau of Investigation and a child abuse and neglect check in those states that allow them. Not later than 30 days after operationalizing a facility, the director of each influx facility should submit to the Secretary proof that background checks have been completed for the relevant facility staff and all new hires going forward.
- With respect to any influx facility that operates for a period of more than 90 consecutive days, the Secretary should ensure full adherence to the monitoring requirements set forth in section 5.5 of ORR's Policy Guide. For influx facilities online for more than 3

consecutive months, ORR should conduct a minimum of 1 comprehensive monitoring visit each month that includes prevention of sexual abuse (PSA), health care and mental health access monitoring, with additional monitoring visits, including unannounced visits, at least quarterly thereafter. The HHS Office of Inspector General (OIG) and the independent advisory board (*see Subtopic #4, Priority Action #2 below)* should carry out monitoring activities.

- The Secretary should ensure that an unaccompanied child is not transferred to an influx facility if—
    - The influx facility would be the first shelter placement for the unaccompanied child on arrival in the United States;
    - ORR has not identified a potential sponsor for the unaccompanied child at the time of transfer or placement;
    - ORR has identified the unaccompanied child does not have parental sponsors available (i.e. Category 2, Category 3, or Category 4).
    - The unaccompanied child is under the age of 13 years; is part of a sibling group in ORR custody, of which one or more siblings are under the age of 13 years; is subject to a pending age determination; whose best language is something other than English or Spanish; has known special needs, such as mental health needs or an identified disability; has not received a Know Your Rights or legal screening prior to transfer; has known behavioral or medical issues, including a contagious disease or a health issue requiring immediate evaluation or medical treatment by a healthcare provider; is a pregnant or parenting teenager; is a danger to themselves or others; has a criminal history, including a charge for a criminal offense; has been a perpetrator or a victim of smuggling or trafficking activities; is involved in an active state licensing or law enforcement investigation or investigation under PREA; will turn 18 years of age on a date that is not more than 30 days after the proposed date of such transfer; is scheduled to be discharged on a date that is not more than 3 days after the proposed date of such transfer; has a pending home study; has an upcoming hearing date scheduled in immigration court or state court, including family or juvenile court; has a pending application for legal relief; or has a legal representative.
    - In the case of an unaccompanied child whom ORR transfers to an influx care facility in violation of the standards outlined above, the Secretary should alert the relevant legal service provider and transfer the child to a facility appropriate to the child's needs as expeditiously as possible.
- ORR should not hold a child in an influx facility (or combination of influx facilities) for more than 30 days.
- In selecting the location for an influx facility, the Secretary should take into consideration the proximity of pediatric medical and subspecialty medical care, legal service providers and mental health providers to the proposed location. Where the Secretary seeks to open a facility lacking proximity to these services, the Secretary must provide written justification to Congress.
- There should be a presumption that the influx facility will close after a maximum period of 6 months. If necessary, the Secretary may grant a 60-day renewable extension, based

on a review of relevant recommendations from the HHS OIG's office and the independent advisory board, among others. However, under no circumstances may the Secretary continue to house unaccompanied children in an influx facility that is not in compliance with the minimum requirements of the Flores Settlement Agreement, once the last waiver/extension expires.
- Any influx facilities in operation at the time of transition will have 30 days to come into compliance with these standards.

The White House should mandate in its presidential memorandum on care of unaccompanied children (see Subtopic #4, Priority Action #1 below) oversight of and accountability for any influx facilities in use or operation, requiring that ORR publicly post the following information not later than 60 days after the date on which a new influx care facility commences operation and monthly thereafter while in operation:

- The number of days the influx facility is expected to remain in operation;
- A plan for how the facility plans to close and an estimated date for closure;
- Aa description of the steps taken by the Secretary to increase permanent bed capacity in ORR facilities so as to minimize the need for the influx facility;
- The number of unaccompanied children placed at the influx facility;
- Demographic data on the children placed at the facility; and
- The average length of stay for children at the facility, and if longer than 30 days, a description of the obstacles to safely and expeditiously releasing children from care or transferring them to a permanent ORR facility

Priority Action #5: ORR should engage in a comprehensive study of alternatives to secure, staff-secure and RTC placements and strategies to end their use altogether. ORR should amend sections 1.4.2 and 1.4.6 of its Policy Guide regarding the use of secure and RTC placements and should promulgate regulations through formal agency rulemaking to reflect the following guidelines *(see Subtopic #3, Priority Action #1 below):*

- ORR should only place children to secure facilities after an adjudication of delinquency and clear and convincing evidence that the child's juvenile adjudication is probative of serious danger to others and the child cannot be cared for in a less restrictive setting. Consistent with the Flores Settlement Agreement, not all juvenile adjudications would prompt review for transfer to secure facilities. ORR should not place children in secure settings based only on a risk of self-harm or behavior related to their trauma or mental health condition, which can be addressed in less restrictive settings. Furthermore, a licensed psychologist should evaluate any proposed step-up to secure or staff secure facilities based on a child's behavior to ensure that any assessment of a child's "danger to self or others" is not in fact the result of unmet trauma or mental health needs. ORR should not discriminate against children who suffer from mental or physical disabilities and should not penalize children by placing them in more restrictive settings based on mental health symptoms.
- ORR should train staff in foster care, shelter and staff-secure settings to minimize involvement of law enforcement and the juvenile justice system where there are less punitive alternatives for children. ORR should train staff to identify where children's

behavior is related to mental health or trauma-related issues and provide children with treatment and restorative responses that will not result in the use of law enforcement authorities.

- Before ORR may determine that an RTC placement is in a child's best interests, the child should receive a detailed evaluation by a qualified psychologist or psychiatrist trained in the care of children—preferably one with a background that includes working with migrant children—explaining the reasons for placement in an RTC, identified treatment goals and an individualized plan for transition to a less restrictive setting. Furthermore, to ensure compliance with Section 504 of the Rehabilitation Act of 1973, ORR must provide written justification that placing a child in an RTC based on a mental health, intellectual and/or developmental disability provides that child with the most integrated setting appropriate to that child's needs and will not result in segregation of the child based on their disability. All RTCs should provide access to legal services and to children's existing counsel and independent child advocate, where applicable.
- Where ORR is considering placement in an out of network RTC, ORR should first obtain a written evaluation of the RTC's experience working with non-English speaking children or immigrant children, the RTC's experience providing trauma-informed care and the staff's cultural competency. ORR should also provide training to out of network RTCs regarding unaccompanied children, their journeys to the United States, their general needs, and the services required for children under U.S. law and regulations. Such training must occur before any child is placed at the RTC. ORR should ensure children in out of network RTCs have access to legal services.
- ORR should minimize the number of transfers unless transfer is in the best interests of the child. In the case of a transfer, ORR should give the child and the child's attorney and independent child advocate at least 72 hours advance notice.
- Where ORR is considering transfer of a child to a more restrictive setting, the child and their attorney and independent child advocate should receive advance notice, including a detailed explanation of the reasons for the proposed transfer. Prior to transfer, the child should have the opportunity to contest the proposed transfer and rebut the evidence against them before a neutral arbiter. If the neutral arbiter approves the transfer, that decision should be provided to the child in writing and should be reviewable in federal court.
- Children placed in more restrictive settings (staff secure, secure and RTC) should have weekly custody reviews with their ORR case manager and a meaningful opportunity to administratively challenge their continued custody in those settings with the child's FFS. The child's legal service provider may assist the child in these challenges. The ORR case manager should provide written justification for continued placement in a restrictive setting to the child, their legal service provider or counsel and independent child advocate where applicable, so as to permit the child's review of their current custody level and for the attorney and/or child advocate to contest the decision.
- All children should have the right to challenge their ORR placement setting in Flores bond hearings, unless they are placed in LTFC *(see Subtopic #1, Priority Action #2).*

Subtopic #3: Providing Appropriate Care for Children in ORR Custody

The Flores Settlement Agreement requires the government to provide certain services to children in custody, including medical screening, educational services, recreation and counseling sessions. The Agreement outlines these required services because of the government's ongoing failure to provide them for immigrant children in its custody. Even after the Flores Settlement Agreement went into effect, the government has failed to provide adequate services to children in its custody multiple times, leading to legal challenges to enforce the Agreement. In August 2019, the government unsuccessfully attempted to finalize regulations that would undermine the rights of and services for unaccompanied children in ORR custody. The government must replace these regulations with provisions consistent with and exceeding the Flores Settlement Agreement protections for children.

Unaccompanied children have unique experiences by virtue of their journey to the United States. Those caring for immigrant children need contextualized, in-person and regular training and re-training about unaccompanied children's unique experiences and needs. Many unaccompanied children have survived severe trauma in their country of origin, on their journey to the United States and once they are in the United States. However, a September 2019 report by the HHS OIG found that care providers identified challenges addressing the trauma children in their care have experienced, and reports have confirmed that ICE uses information from children's sessions—with clinicians, counselors or others who create the equivalent of a counseling or therapeutic environment—against them in their immigration cases. ORR must ensure that children in its care have access to high quality, specialized mental health services, and that the information they share during their sessions cannot be shared with ICE.

Finally, unaccompanied children should have access to the same education as children in the domestic school system, either by release to family or by transition to public schools if they face prolonged custody.

Priority Action #1: HHS and DHS should replace the regulation "Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children" finalized on August 23, 2019 with new regulations that are consistent with the Flores Settlement Agreement. On the following items, the regulations should exceed protections in the Flores Settlement Agreement:

- Stricter limitations on influx and oversight measures during emergencies (*see Subtopic #2, Priority Action #4 above).*
- Limitations on the use of secure facilities *(see Subtopic #2, Priority Action #5 above)*
- Increased procedural protections for children's bond hearings, especially limitations on the use of records that address children's mental health against them in these hearings *(see Subtopic #2, Priority Action #5 above).*
- Access to high-quality, specialized mental health services

Priority Action #2: ORR should provide regular, in-person training for all provider staff positions interacting with children (including youth care workers) on care for immigrant children, including but not limited to mental health and trauma, child development, prevention of sexual

abuse and harassment and cultural competency. This training should be tailored to the age and gender of children in specific facilities and be consistent across the network of providers.

Priority Action #3: ORR should amend, and subsequently issue guidance and conduct trainings for care providers on the amendments, section 5.8.2 of its Policy Guide and the UAC MAP to limit reportable "significant incidents" to:

- Abuse or neglect in ORR care, including sexual abuse
- Contact or threats to a child while in ORR care from smuggling syndicates, organized crime or other criminal actors
- Potential fraudulent schemes, and
- Incidents that involve imminent safety threats to others, including attempts to inflict serious bodily injury or harm or threat of death.

Furthermore, ORR should amend the Policy Guide to state the following: "SIRs should not include disclosures about the child's past or purported gang or cartel affiliation. They further should not include any notes from the child's sessions with their clinician nor be used to note a child declining to take psychotropic medication. Clinicians should only disclose information in accordance with professional ethical standards and applicable state and federal laws. ORR encourages care providers to use incident reports for incidents that would affect a child's health, safety and well-being for their internal records and to ensure services appropriate to a child's needs. Care providers need not share incident reports with ORR unless they cumulatively rise to the level of an SIR, as outlined above."

ORR's guidance to care providers should require care providers to promptly notify the child, the child's legal representative and independent child advocate of SIRs in the child's file and provide copies.

Priority Action #4: ORR should issue guidance to ORR care providers that psychotropic medications are often inappropriate for children and should only be prescribed when necessary and for the shortest time possible. When a medical provider finds that such medications are necessary, facilities should obtain informed and voluntary consent from the authorized legal consenter as required by state law before administering the medication. Facilities should translate any required forms or information regarding the medication to the child and family member in their best language. Facilities should only administer such medication in conjunction with evidence-based psychosocial interventions and collaborative mental health services. A psychiatrist who meets with the child in person should monitor the medication's administration. ORR should train facility staff on identifying the side effects of psychotropic medication. ORR should expand the capacity of the Division of Health for Unaccompanied Children (DHUC) to be able to provide meaningful monitoring and oversight over the administration of psychotropic medication to children in ORR custody, including creating both prospective and retrospective monitoring processes.

Priority Action #5: ORR should expand independent child advocate services to additional locations that have the highest numbers of children in ORR custody or of children appearing in

immigration court. *(See Subtopic #1 of the Access to Legal Relief Section in the Children Chapter for additional information).*

Priority Action #6: For children in care more than 30 days, ORR should make efforts to place them in mainstream public schools near the facility or provide the full equivalent of a public education, including certified teachers and access to all rights afforded under federal disability and homelessness laws. ORR should tailor education in its facilities to individual children's needs, particularly if the child has a disability.

Priority Action #7: ORR should ensure that all care facilities provide children with timely, confidential access to family planning services. This should include pregnancy tests and comprehensive, non-directive information about and access to medical reproductive health services, including abortion and contraception. Children should also have access to emergency contraception. If an abortion is needed, children should have confidential access to courts to seek judicial authorization for the abortion if the minor lives in a state that requires either parental involvement or a court order. Neither ORR nor any shelter may reveal a child's pregnancy or abortion decision to anyone unless the child consents. ORR should make this policy clear internally, to shelters and to children, and should rescind the 2008 memorandum titled "Medical Services Requiring Heightened ORR Involvement."

Subtopic #4: Expanding Post-Release Services

Unaccompanied children and their parents or other sponsors often have significant service needs. Frequently, children have experienced trauma in their home country, on the journey, or both. They may have been victims of physical or sexual violence, experienced death threats or witnessed the deaths of family members or friends. The U.S. government has physically separated some children from parents or other family members. At the time of reunification, the child and parent may not have seen each other in many years, family circumstances may have changed in significant ways and there may be stressful conditions in integrating into the new home and community. Often, parents or other sponsors are unauthorized immigrants with low incomes, and neither they nor the child are eligible for public economic support or public health benefits. Awaiting immigration removal proceedings further increases stress in everyday life.

The COVID-19 pandemic has further exacerbated financial and health needs. Parents and other sponsors may have lost jobs or be working in hazardous conditions. Children may struggle with adjusting to U.S. schools, and as schools have transitioned to online learning in response to COVID-19, unaccompanied children may also face challenges with access to necessary technology.

Despite these significant service needs, federally funded services for children after they are released from ORR custody are often minimal. Children and sponsors receive a phone call 30 days after the child's release and have access to a hotline that provides referral services. A minority of children receive case management, legal services, or both. Federal law mandates case management for children who have had a mandatory home study, and ORR has chosen to

provide case management services in additional situations, but in Fiscal Year 2019, only about 20 percent of released children received any post-release case management. Moreover, the Trump administration reduced the length of post-release case management for most of these children to 90 days. And, despite a statutory requirement to ensure that, to the greatest extent practicable, all unaccompanied children who are or have been in federal custody have counsel to represent them, ORR only provides counsel for a small fraction of children released from custody.

Priority Action #1: ORR should ensure the availability of counsel through a combination of increased support for pro bono efforts along with direct funding of legal service providers for all children released from federal custody to parents or other sponsors, consistent with federal law. *(See DOJ Legal Relief Section of the Children Chapter for more on representation for unaccompanied children and the legal orientation for custodians program).*

Priority Action #2: ORR should provide case management to all children released from custody for the first 90 days after release and should identify circumstances in which it should provide case management for longer than 90 days.

Priority Action #3: ORR should clarify and expand requirements for post-release case management to include, though not be limited to, providing active assistance in school enrollment; ensuring that sponsors have needed medical records, including vaccination records, from the time children were in ORR custody; and ensuring linkages to family reunification support services, including parent education, parenting support and family counseling, whether through direct provision of such services or through partnerships and referrals to services in the community.

Subtopic #5: Accountability, Transparency and Oversight of the ORR Unaccompanied Children Program

During the past three years, the Trump administration has undermined the mandate of ORR by entangling the agency with DHS and immigration enforcement, seeking to hold children in prolonged custody, using harmful rhetoric about immigrant children exploiting "loopholes" and promoting racist assumptions about gang affiliation. The next administration needs to take quick corrective action to restore ORR's mandate to protect the health, safety and well-being of children in its custody in a manner that treats immigrant children first as children.

During the Trump administration's assault on immigrant children, independent oversight of ORR facilities by Flores counsel and comprehensive data have ensured that Congress, legal advocates and the public have the information they need to protect children's rights. The next administration should continue robust, independent monitoring and transparency, identify negative trends through accurate data collection and take corrective action to ensure that immigrant children's rights and best interests continue to be central to government policy.

Priority Action #1: The White House should issue a presidential memorandum requiring an external body to review the performance of ORR's unaccompanied children program and to create a report evaluating the program and outlining a corrective action plan for the program

within 60 days into the new administration. The presidential memorandum should also require the Secretary of HHS to create an independent, multidisciplinary advisory board to monitor and provide guidance to ORR as it implements the corrective action plan.

Priority Action #2: Pursuant to the White House memorandum, the Secretary of HHS should establish an independent, multidisciplinary oversight advisory board and support legislation to make it permanent. The board should:

- Include experts in child welfare, child development, immigration relief for unaccompanied children and international child protection, as well as persons formerly in ORR custody as unaccompanied children;
- Monitor and provide guidance to ORR's implementation of the corrective action plan;
- Have unobstructed access to ORR facilities in order to confidentially interview children and advocate for individual children; and
- Have independent authority to review data collection and obtain responses and necessary corrective action regarding the accuracy and integrity of the data.

This board should function separately from and in addition to the role of monitors required by the Flores Settlement Agreement.

Priority Action #3: ORR should develop a systematic data collection system modeled on the Adoption and Safe Families Act Child Welfare Outcomes Report to report, on a monthly basis and broken down by placement level and individual facility, the following information:

- Total census of children in custody
- Average length of care
- Average length of stay
- Total number of children in care for more than 30, 60 and 90 days
- Filled percentage capacity at each placement
- Filled percentage capacity of total ORR facilities
- Discharges to sponsors by category (as percentage)
- Sponsor category of children in care at a snapshot in time (for example, the last day of the month)
- Maximum number of operational beds
- Total referrals to ORR
- Tender age (0-12) children by placement type
- Percentages of children receiving mandatory home studies, discretionary home studies and post-release services
- Percentage of children with disabilities as defined by the Americans with Disabilities Act
- Countries of origin of children
- Ages and genders of children

Priority Action #4: ORR should amend section 5.5.1 of the Policy Guide to require annual formal monitoring visits to facilities. Similarly, ORR should amend section 4.12.1 to require annual PREA compliance audits.

Priority Action #5: The White House should ensure that the qualifications considered for the ORR Director reflect the following experience and expertise:

- Experience and knowledge of child welfare principles, child protection principles and child development
- Proven experience with integration programming; refugee, asylee, Special Immigrant Juvenile status, unaccompanied children, and other ORR populations; knowledge of immigration law, and management and budget in government or a large organization or coalition. *(See the Refugee Resettlement Section of the Humanitarian Protection Chapter for more on these qualifications).*
- Commitment to the rights of and services for immigrant children, particularly non-discrimination of immigrant children in accessing services, including education, mental health services and reproductive health services.

ORR should ensure that job descriptions for career staff, particularly the Director of Policy and Unaccompanied Children Programs, reflect similar experience.

Topic #5: Access to Benefits, Education and Critical Services

This topic was drafted by Wendy Cervantes (CLASP), Juan Gomez (CLASP), Vanessa Meraz (CLASP), Miriam Abaya (First Focus), Mary Miller Flowers (Young Center), Jennifer Nagda (Young Center), Santiago Mueckay (Save the Children Action Network), Mark Greenberg (MPI), Mario Bruzzone (USCRI), and Rebecca Ullrich (CLASP).

Children in immigrant families now comprise 1 in 4 of all children in the United States, and their healthy development is directly linked to our nation's future prosperity. Yet children in immigrant families, including those who are immigrants themselves or U.S. citizens living in mixed-status families, are more likely to be low-income and face unique barriers to accessing critical health care, nutrition and other safety net programs that are proven to help children in low-income families thrive. These barriers include language and cultural challenges, confusing immigrant eligibility rules and other immigration-related concerns. Additionally, children of immigrants, including unaccompanied children, have faced barriers to enrolling in K-12 schools as well as disruptions in attendance due to fears of immigration enforcement. Young children of immigrants are also underrepresented in childcare and early education programs despite the large body of research documenting the importance of these programs in the early years, particularly for children who are low-income or Dual Language Learners (DLLs).

The Trump administration's onslaught of anti-immigrant policies has exacerbated many of the historical barriers to public benefits, education and other critical services. From increased interior enforcement actions to policy changes like the new public charge rule, the result has been more children, including U.S. citizens, losing out on health care, nutrition and other benefits for which they are eligible. The COVID-19 crisis has further exposed the harmful implications of exclusionary health care and emergency relief policies for those excluded as well as the broader community, with millions of immigrant families forced to face the prospect of life-threatening illness and deeper poverty due to lack of access to health care, nutrition assistance and economic support. For children, the consequences of enduring overwhelming

levels of stress, going without sufficient food and having irregular access to medical care and other hardships can be deep and lasting. Therefore, a focus on undoing the harm done and prioritizing children of immigrants for additional resources to support their healing will be essential. To begin to undo the damage done in recent years and move towards more inclusivity, the next administration should make robust cross-agency efforts to quickly rescind harmful policies and to educate and prepare frontline staff and outreach workers to rebuild trust in immigrant communities and engage and educate them about the programs and services available to them. Attention to children of immigrants should be a central responsibility of a newly created office in the White House or U.S. Department of Health and Human Services (HHS).

The next administration should begin immediately to convene listening sessions and otherwise gather data and information on children of immigrants' access to benefits, education and other critical services. The goal should be to uncover the harmful impacts for children and learn from providers and communities about promising practices to inform the agenda below.

Subtopic #1: Expand Immigrants' and Their Families' Access to Health Care, Nutrition and Other Public Benefits

The chilling effect created by Trump administration policies—for example, the public charge policy and the proposed U.S. Department of Housing and Urban Development (HUD) rule restricting access to house subsidies for mixed-status families—has already compromised the health and well-being of millions of children in immigrant families across the country. Recent research from the Urban Institute reveals that 1 in 7 adults in low-income immigrant families reported avoiding programs like Medicaid, Supplemental Nutrition Assistance Program (SNAP), or housing subsidies because of fears related to future green card status. It is estimated that as many as 10 million U.S. citizen children in immigrant families could be negatively impacted by the public charge rule, and several studies have already demonstrated reported declines in Medicaid, SNAP and Special Supplemental Nutrition Program for *Women, Infants, and Children (WIC)* participation among immigrant families.

Priority Action #1: Implement Priority Actions #1-6 in Subtopic #1, "Remove Barriers to Accessing Programs That Help Immigrants and Their Families Thrive," under the *Access to Public Benefits Section in the Naturalization, Integration, and Family Based Immigration Chapter*. Under Priority Action #6, which calls for the creation of a dedicated office or cross-agency task force dedicated to improving immigrants' and their family members' access to health, nutrition and housing benefits, we strongly recommend an Office of Immigrant Children and Families rather than a task force, and that the scope of this office include additional programs such as child care, early childhood and education programs. This office should help to inform and collaborate with other departments and agencies such as HHS, the U.S. Department of Agriculture, HUD, the Social Security administration (SSA) and the Department of Education to help engage in outreach efforts to immigrant families.

Subtopic #2: Improve Access to K-12 Education and Child Care and Early Education Programs for Immigrant Children and U.S. Citizen Children in Immigrant Families

Today more than 5 million children aged 18 or younger live in mixed-status households, 80 percent of whom are U.S. citizens. Moreover, nearly 1 million students in the K-12 system are undocumented. Access to public education at the elementary and secondary level is a right for every child growing up in the United States, regardless of their or their parents' immigration status. According to the Supreme Court decision in *Plyler v. Doe*, states cannot deny children access to a public K-12 education based on their immigration status. Federal law also prohibits discrimination in school enrollment practices on the basis of race, color, national origin, etc. by way of the Civil Rights Act of 1964. Unfortunately, the Department of Education has taken steps under the Trump administration to dissolve previous protections and guidance that protected historically marginalized students, including immigrant children and children in immigrant families. These Department of Education actions—combined with other Trump administration efforts to ramp up interior enforcement, delay the release of unaccompanied children to sponsors, and restrict immigrants' access to public programs—have the effect of denying children and youth their right to education. The next administration should remind local education agencies of, and support them in, their obligation to provide every child with access to a K-12 education.

Young children of immigrants, the majority of whom are U.S. citizens, also remain underrepresented in critical childcare and early education programs. Head Start does not have any immigrant eligibility restrictions. Guidance from HHS implementing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 identified the Child Care and Development Block Grant (CCDBG) and Temporary Assistance for Needy Families (TANF) block grant—the main sources of funding for child care assistance for low-income families—as "federal public benefits," meaning that they are only accessible to "qualified immigrants." However, 2016 CCDBG regulations clarify that only the child's immigration status is relevant for eligibility determination. There are several circumstances in which CCDBG-funded care is otherwise exempt from restrictions based on immigration status. The next administration should help ramp up outreach efforts in immigrant communities and support programs in ensuring that enrollment procedures do not deter immigrant families from enrolling.

Priority Action #1: Improve and expand the ICE and CBP sensitive locations policy to ensure that immigrant parents feel safe taking their children to and from K-12, early childhood and childcare programs. (*See Subtopic #2 in the ICE Interior Enforcement Section of the Children Chapter for more information on expansion and improvement of the sensitive locations policy, including disseminating information about the policy to local education agencies, Head Start programs, and other childcare and early education programs).*

Priority Action #2: Reissue and widely disseminate guidance for access to K-12 education for immigrant students. The Department of Education and Department of Justice (DOJ) should reissue and disseminate guidance to local education agencies with a statement reiterating the next administration's commitment to upholding education access for all children and include information regarding existing and/or strengthened privacy protections as well as

accountability measures. The Department of Education and DOJ should reissue 2014 guidance that cites both *Plyer v. Doe* and the Civil Rights Act of 1964 as the basis for why educational agencies cannot request information that may restrict students' public school access on the basis of race, color or national origin and lists examples of information that cannot be used as a basis to bar a student from enrolling at a school.

Priority Action #3: Ensure post-release services offered by the Office of Refugee Resettlement (ORR) include assistance to sponsors in enrolling unaccompanied children in school. *(See the ORR Unaccompanied Children Section of the Children chapter, Subtopic #4 Expanding Post-Release Services, Priority Action #3).*

Priority Action #4: Issue guidance to states regarding immigrant eligibility for child care and early education to disseminate into communities. The administration for Children and Families (ACF) should issue guidance to state agencies administering early childhood programs regarding immigrant families' eligibility for child care and early education programs, including Head Start, child care subsidies, public pre-kindergarten and home visiting. The ACF should issue guidance to Child Care CCDBG administrators regarding policies that reduce barriers to child care subsidies for immigrant parents, such as:

- Only asking for the citizenship status for the child(ren) in need of care
- Allowing parents to self-attest to employment and wages
- Authorizing care based on the maximum number of hours needed when schedules vary from week to week
- Accepting Individual Taxpayer Identification Numbers for family, friend, and neighbor caregivers

The ACF should issue guidance to states to operationalize exemptions to the citizenship/immigration status verification requirements in current regulations, including childcare-Head Start collaborations and broadly defining the exemption related to public educational standards. The ACF should encourage states to use consumer education resources to share information about immigrant eligibility widely and in multiple languages. The ACF should encourage states to partner with community-based organizations to conduct outreach to immigrant communities and provide one-on-one support with completing applications, as well as to provide technical assistance to immigrant-serving organizations on establishing early childhood programs.

Priority Action #5: Leverage Head Start as community leaders to share information and best practices regarding trauma-informed care, culturally appropriate services and outreach and enrollment to immigrant families. The ACF should issue educational resources to Head Start programs immediately to convey Head Start as a welcoming program for immigrant families. This should include information on best practices for outreach and enrollment of immigrant families and information to disseminate to families about access to Head Start and public benefit programs and sensitive locations. The ACF should broadly disseminate research and best practices on early childhood practices with DLLs and monitor implementation of Head Start standards on DLLs to identify areas for technical assistance.

Priority Action #6: Identify resources to advance the undoing harm agenda quickly. The HHS should identify discretionary dollars where available, including research and technical assistance funds, to direct resources to support a focus on healing for children of immigrants, including Black children and other subpopulations, in service delivery. Discretionary dollars that can be used for outreach to community organizations for rapid outreach to and enrollment of families in services should also be identified.

Topic #6: Safe Repatriation

This topic was drafted by Jennifer Nagda (Young Center), Mary Miller Flowers (Young Center), Miriam Abaya (First Focus), Cory Shindel (KIND), Mary Giovagnoli (KIND), Elaine Weisman (ISS-USA), Julie Rosicky (ISS-USA), Mark Engman (UNICEF), Rhonda Fleischer (UNICEF), Eitan Peled (UNICEF), Basel Mousslly (LIRS), and Ashley Feasley (USCCB).

The Trafficking Victims Protection Reauthorization Act (TVPRA) creates a clear expectation that the U.S. government not return vulnerable children to unsafe situations in their countries of origin. Rather, it calls on federal agencies to "ensur[e] the safe repatriation of children." The TVPRA requires the Departments of Health and Human Services (HHS), Homeland Security (DHS), and State (DOS) to create a pilot program to ensure children's safe return, as well as "develop and implement best practices to ensure the safe and sustainable repatriation and reintegration of unaccompanied [immigrant] children." The TVPRA further requires the DHS Secretary to assess whether an unaccompanied child can repatriate to a particular country, consulting DOS country and trafficking in persons reports. Agencies must also report to Congress regularly on how, when and why the U.S. government has repatriated children to their country of origin, including "the steps taken to ensure children were safely and humanely repatriated" and the legal relief those children sought and were denied.

The TVPRA's mandate builds on the United States' international obligations under the 1967 Protocol Relating to the Status of Refugees and the United Nations Convention Relating to the Status of Refugees, which requires the United States to comply with the Protocol's principle of non-refoulement—the commitment not to return refugees and asylum-seekers to a country where they will face persecution on protected grounds.

However, the U.S. government has repeatedly failed to meet its obligations under the statute. During the COVID-19 pandemic, the government went so far as to expel children at the border without designating them as unaccompanied and with no investigation into their ability to safely return to their country of origin. Instead, non-governmental organizations (NGOs)working with children both in the United States and in countries of origin have stepped into the gap to assess children's ability to safely return, do pre-departure safety planning, and run reintegration programs to support children and their families. The U.S. government must begin to fulfill its obligation under both international law and the TVPRA to ensure that children returning to their country of origin will be safe, return in a manner suitable to children and have in-country support to address their particular needs and vulnerabilities upon return. In addition, the government must meet its TVPRA obligation to file reports with Congress regarding the

repatriation of children and expand the data report to include information that provides a genuine picture of the demographics, needs and trends involving repatriated children.

Subtopic #1: Develop and Implement Best Practices on Safe Repatriation for Children

The TVPRA requires DHS to consult DOS country reports in assessing whether to repatriate an unaccompanied child to a particular country. Additionally, the Office of Refugee Resettlement (ORR), which is responsible for the care and custody of unaccompanied children in government custody, is well situated to investigate whether or not a child can safely return to their home country. This investigation not only informs whether or not a child can safely return, but can also serve to identify services for children if they do return. However, both agencies have failed to fully take on these roles of investigation, leaving NGOs to do the work.

Without proper information, immigration judges or other adjudicators are unable to make informed determinations about whether a child will be safe if granted voluntary departure or ordered removed. In cases where a child is returning to their country of origin, the U.S. government also fails to fulfill its statutory mandate to have a program for children's safe repatriation. Immigration judges, DHS and ORR need clear guidelines to properly inquire as to whether a child can safely return, properly consider that information and plan to support children's return journeys and reintegration. Where all evidence points to the fact that a child cannot safely return, DHS should exercise discretion in that child's case to avoid sending a child back to danger. The next administration should also support legislation to grant complementary protection for children who do not qualify for other forms of legal relief but would face danger upon return *(see the Humanitarian Protection Chapter for more on complementary protection).*

Priority Action #1: The DHS Secretary should establish a designated division under the Office of the Principal Legal Advisor (OPLA) to accept referrals for consideration of discretion in the form of deferred action or administrative closure, for children's cases where there is no relief or relief has been denied but there are clear safety concerns.

Priority Action #2: The OPLA division created through Priority Action #1 should issue a memorandum requiring DHS attorneys to submit evidence in immigration court regarding whether a child can safely repatriate in cases where the child requests voluntary departure or where ICE is pursuing a removal order. Under this memorandum, DHS attorneys must disclose to the immigration judge and the child's legal representative any information that a child would be unsafe upon return.

Priority Action #3: The Executive Office for Immigration Review (EOIR) should issue a policy memorandum requiring immigration judges to take the following steps whenever a child seeks voluntary departure or where there is concern for a child's safety upon return:

- Ensure the child has legal representation
- Refer the child for appointment of an independent child advocate
- Consider the independent child advocate's best interests recommendations prior to making a decision on voluntary departure or issuing a removal order

- Inquire with all parties about the child's ability to safely return, including to whom a child would return, whether the child previously expressed fear of return and whether the child perceives future harm
- Where there is evidence that the child will be unsafe upon return, refer the case to the OPLA division created through Priority Action #1 above for consideration of discretion

EOIR's policy memorandum should also require immigration judges to complete training in the assessment of safety risks for returning children and to include analysis of how the immigration judge took safety risks into consideration in all decisions granting a request for voluntary departure or issuing a removal order.

Priority Action #4: The Enforcement and Removal Operations (ERO) Director should amend section 3.4 on Removal and Returns of the Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook to require Field Office Juvenile Coordinators (FOJCs) to apply the following best practices where investigation has shown that a child is able to safely return:

- Identify and speak with an adult (particularly a parent, legal guardian, traditional caregiver or functioning child welfare agency) who has been determined to be safe and appropriate to care for the child upon return.
- Notify the child's consulate and child welfare authorities no less than 72 hours before a child's return. Provide notice to the child's legal representative, child advocate, ORR case manager and reintegration service provider as soon as possible, but at least 72 hours before return.
- Coordinate with consulate or ORR-contracted program staff to ensure that the identified adult can be present at the date and time of the child's arrival or that the relevant agency in the country of origin has made all necessary arrangements to promptly reunify the child with a family member.
- Arrange for the child's travel to their country of origin during daylight hours, separate from unrelated adults, and accompanied by a plain-clothes agency official with child welfare training and experience related to working with unaccompanied and separated children.
- Ensure the child has identity documents for the country of return, food, beverages, clothing, at least 6 months of necessary medications, copies of medical records, certificate of education from ORR and access to personal items during the journey.
- Ensure there is a reception and reintegration plan in place that includes follow-up with the family to connect them to in-country resources/services.

Based on evaluations of the safe repatriation program by the interagency task force (*see Sub-topic #3, Priority Action #2 below*), ERO should update this section of the handbook as needed to reflect best practices and procedures for children's safe return. ERO should also require regular training for FOJCs, provided by trained child welfare professionals and members of the interagency task force's civil society advisory panel, on updates to the handbook and best practices regarding children's safe return.

ERO should ensure access to the repatriation process for all unaccompanied children who seek repatriation, whether or not they are in ORR custody or have been released to a sponsor.

Priority Action #5: ORR should amend its Unaccompanied Children Program Manual of Procedures to require Federal Field Specialists (FFSs) and ORR-contracted care providers to apply the following best practices where investigation has shown that a child is able to safely return:

- In the case of children who have been in ORR custody for 90 days or more, develop case discharge/transition plans for children returning to their home country, that include a brief summary of types and dates of care facilities the child has been in while in the United States, information about the child's education while in the United States, and brief descriptions of any medical, mental or behavioral health treatment the child has received, with an overview of general outcomes and observations, as well as recommendations for any future treatment.
- Ensure the child has received at least a 6-month supply of prescription medication, written and verbal instructions on use and consumption of the medication and information regarding the continued use of the medication in the child's best language; provide the same information to the child's family member in the country of origin.
- Designate a recognized Safe Repatriation Coordinator to facilitate referrals to government or civil society reintegration programs and work with all parties to ensure smooth repatriation. ORR should contact the coordinator as soon as it appears likely that the child may need to take advantage of repatriation services.
- Ensure that the child receives child-appropriate and child-friendly orientation that explains the return process step by step 72 hours before the child's departure from the United States.

Subtopic #2: Improved Coordination Between Agencies and Governments

There are multiple agencies and governments involved in any repatriation decision. ORR and DHS coordinate to transport the child within the United States. DHS and DOS have a role in planning the child's journey to their country of origin. The DOS and the U.S. Agency for International Development (USAID) fund programs in countries of origin that provide social services to communities, including families with returned children. Without coordination, the U.S. government will not be able to fulfill its statutory mandate to safely return children. In order to ensure that children's return is safe and coordinated, U.S. government agencies need to improve their inter-agency and intergovernmental coordination and collaboration.

Priority Action #1: HHS, DOS and USAID should establish liaisons to communicate with their equivalent agencies in the top 10 countries of origin. These liaisons should, with their counterparts, identify points of contact in both public and private agencies in receiving countries. These agencies should refer returning children to appropriate services and ensure that arrangements are made prior to a child's departure from the United States. Liaisons should meet with their counterparts regularly to engage in bilateral dialogue on child migration. ORR should coordinate with child welfare agencies in countries of origin to ensure that case

managers provide information to the child and their family regarding reunification in that country.

Priority Action #2: The DOS Bureau of Population, Refugees and Migration (PRM) should develop humanitarian assistance programs in the top 10 countries of origin to develop designated safe spaces in which children repatriated from the United States can meet family members or child welfare authorities upon their return. PRM should provide overseas assistance funding to government child protection agencies and civil society with experience caring for families and children to develop these safe spaces and encourage civil society presence in any government-run reception centers. These spaces should immediately provide nutrition, medical evaluation and referrals to social and legal services for children. They should also provide resources and links to programs designed for parents and must include staff with language capabilities appropriate to the population.

Priority Action #3: PRM should develop humanitarian assistance programs in the top 10 countries of origin to provide travel assistance for the family to meet returning children and ensure safe return to that family's community. These programs should evaluate the needs of each individual family to determine which form of assistance is most appropriate, including temporary lodging after reunification, accompaniment and public transportation fare for return to the community. A combination of government child protection agencies and civil society organizations should provide fare and temporary lodging, while civil society organizations with experience caring for children and families should provide accompaniment.

Subtopic #3: Monitoring and Evaluation of Child Safe Repatriation Program

Monitoring, accountability and transparency need to be part of safe repatriation programs to ensure their effectiveness. The TVPRA requires HHS and DOS, with the assistance of DHS, to submit an annual report to Congress on efforts to improve repatriation programs for unaccompanied children. The report must include: 1) the number of children ordered removed and actually removed from the United States, 2) the nationalities, ages and gender of such children, 3) a description of the policies and procedures used when removing children and steps taken to ensure safe and humane repatriation, 4) the type of immigration relief sought and denied to such children, and 5) any information gathered in assessing country and local conditions. The government has only submitted one such report since Congress passed the TVPRA in 2008.

Beyond accountability to Congress, government agencies need to ensure they have accurate data on children who return in order to evaluate the effectiveness of their safe repatriation policies and procedures. In order to avoid harm to child returnees, the government must coordinate with social service programs in countries of origin to evaluate data on trends of success, whether children are re-introduced to harm and adjustment to repatriation policies and procedures to promote safe return.

Priority Action #1: In its presidential memorandum regarding the care of unaccompanied children *(see the ORR Unaccompanied Children Section of the Children Chapter, Subtopic #4,*

Priority Action #1), the White House should reiterate to the Secretaries of State, DHS, and HHS their obligation to submit annual reports to Congress on the safe repatriation of children and direct them to create an interagency task force to properly monitor and evaluate the government's safe repatriation program, as well as ensure that such evaluation informs the implementation of best practices across agencies.

Priority Action #2: Pursuant to the presidential memorandum, the Secretaries of State, DHS and HHS should create an interagency task force dedicated to the safe repatriation of children. The task force should maintain and evaluate data on all children returned to their country of origin, including data from the governments of the top 10 sending countries and the top 10 countries to which children return. The task force should contract with recognized civil society organizations, such as the organizations coordinating repatriation, to monitor repatriated children's status 120 days after return. The task force should use the data collected from contracted organizations to report back to the respective agencies on improvements to the safe repatriation program. The task force should also be responsible for interagency coordination to draft the annual report to Congress. In addition, the task force should host a civil society advisory panel to provide input and analysis on best practices and policies for supporting the safe repatriation of children. The panel should include civil society organizations with expertise in international child protection, child development, child-related foreign assistance programs, safe repatriation and reintegration programs for unaccompanied children.

Subtopic #4: Support of Reintegration Programs for Children

In cases where the U.S. government repatriates a child, it must ensure that the return is supported within the home country with sufficient resources to address, as much as possible, issues in the child's life that may have triggered the initial departure. Currently, several U.S. NGOs have limited public and private funding to work directly with service providers in parts of Guatemala, Honduras and El Salvador, but these efforts only cover a small number of children each year. In some cases, lack of coverage is based on funding, but in others, the site of return may have little or no local services available or may be too remote for current caseworkers to easily reach the child.

Ideally, the child's reintegration into family and community will include not only an assessment of the child and family's needs, but direct support for health, psycho-social services, education and, where appropriate or available, economic support or job training. The most successful programs involve coordination between U.S. NGOs and local counterparts and increase the likelihood that a child can successfully return home. Expanded coverage of repatriated children is a necessity, but always within the context of ensuring that it truly is in the best interests of the child to return home. As such, the U.S. government should carefully coordinate reintegration programs with any repatriation efforts, including home studies and other evaluations that may take place. *(See the Humanitarian Protection Chapter for more on reintegration programs for both children and adults).*

Priority Action #1: PRM and USAID should support governments in the top 10 countries of origin where children are returning to develop long-term, direct services reintegration

programming that recognizes the importance of local-level, community-based service provision, and form formal contracts with civil society organizations with child protection experience to provide such services. Such services should:

- Be localized and culturally appropriate. Offer reintegration services in native languages which correspond to local culture and traditions.
- Include psychosocial support to children who have witnessed or experienced sexual or gender-based violence as well as address overall physical and mental health needs.
- Address the barriers that girls and women face to re-accessing education and employment, including discrimination within the home and broader community.
- Include regular follow up if there is any concern about children's safety upon return, in order to ensure that they do not get returned to exploitative or abusive circumstances.
- Include collaboration of social workers with expertise in child welfare to determine what catalyzed the migration, and to create an individualized plan to address and mitigate underlying risk factors identified.
- Offer school (re)enrollment and/or skills training to help provide children with the kind of opportunities that will help them stay in their country of origin and not attempt to re-migrate.
- Include access to employment opportunities in skill-based training. All too often, some training courses focus only on building repatriated youth and adults' skills without providing channels to sustainable employment. Programming should include partnerships with safe and rights-respecting employers that allow returned migrants to work while also being sensitive to their other needs.
- Continue for at least one year after a child's return and include support for parents or caregivers of returned children and youth, connecting them to job training or other opportunities for economic empowerment.

Priority Action #2: In countries where civil society capacity to provide reintegration support does not exist, PRM and USAID should offer capacity building assistance for civil society organizations in areas of psychosocial support, health, violence prevention, job training and youth empowerment to strengthen social and community safety nets. This capacity building should include training and resources for social service agencies to provide ongoing follow up services for returned children and their families, as well as training and technical assistance to develop social service case management networks by social work case managers.

Priority Action #3: PRM and USAID should expand their economic development and education programs in communities of high migration. Consistent with programs addressing root causes *(see the Humanitarian Protection chapter for additional information)*, these agencies should provide funding and services to ensure that repatriation is safe and successful. These agencies should provide funding to communities at high-risk of migration in the areas of education, job training, trauma-informed mental health and gender-based violence prevention.

Topic #7: Family Separation at the Border

This topic was drafted by Leah Chavla (WRC), Katharina Obser (WRC), Cory Shindel (KIND), Santiago Mueckay (Save the Children Action Network), Charanya Krishnaswami (Amnesty

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Over the past few years, the U.S. government has separated thousands of families after they arrived at the southern U.S. border. Family separation has not been limited to the "zero tolerance" policy the U.S. government implemented in May and June of 2018; it has occurred—both intentionally and inadvertently—for years and continues today. Separations cause irreparable harm to affected families and may result in permanent separations. Family integrity is a constitutionally protected right. Moreover, it is universally recognized that children deserve additional protections and safeguards due to their heightened state of vulnerability and development.

The next administration should immediately implement the actions described below to 1) stop unwarranted separations and remedy past ones; 2) establish a fair, efficient and humane process to further investigate rare cases in which a separation may be warranted; and 3) prioritize the use of inexpensive, effective and humane alternatives to detention—such as release from custody or release into case management programs—that preserve family unity, ensure families have access to critical services they need during their immigration proceedings and keep families in the community with sponsors as opposed to in punitive, carceral settings. While this document envisions U.S. policy and practice to result in only rare or temporary separations in what should be exceptional circumstances, and outlines steps for scenarios in which minor children travel with a caregiver with outstanding questions over guardianship, it also addresses longstanding concerns that those impacted by separation and their advocates have raised, including with regard to tracking, to ensure remedies are available regardless of the formal policies on family separation that are in place.

Please note: family separations that occur as a result of interior enforcement are addressed in the *ICE Interior Enforcement Section of the Children Chapter.*

The following principles should serve as the foundation for the Priority Actions listed below:

- The Department of Homeland Security (DHS) should consider family unity as a primary factor in all charging and detention decisions. This includes but is not necessarily limited to families consisting of parents/legal guardians and minor children, families consisting of spouses, families consisting of siblings (including where siblings consist of minor children and adults) and families including non-parental caregivers of minor children, such as grandparents and aunts/uncles. Absent a concern over imminent risk of harm to the child, this should apply even in situations involving families of mixed status, such as U.S. citizen children who are accompanied by parents or caregivers who may lack immigration status.
- DHS should consider the best interests of the child, as defined by the Subcommittee on Best Interests of the Interagency Working Group on Unaccompanied and Separated Children in all processing, custody, and removal and repatriation decisions. The

Subcommittee specifies that consideration of a child's best interests requires analysis of several widely accepted elements, particularly the child's safety and well-being, expressed interests, health, family integrity, liberty, development, and identity.

- Given that family integrity is a constitutionally protected right and the well-being of children is paramount, the U.S. government should use a social service lens in making any decision(s) on whether a temporary physical separation may be appropriate while investigating the imminent risk of harm to the child(ren). Only a small fraction of cases would result in temporary physical separation based on historical data. Determinations to separate parents/legal guardians from minor children should be under the purview of state-licensed child welfare professionals as outlined in Subtopic #1 below. However, determinations to separate should not constitute child welfare or parental rights determinations, nor should they be considered terminations of parental rights or determinations of parental fitness, all of which are procedures under the jurisdiction of the states. Any separation determination affecting the parent-child relationship should be subject to judicial review by a court of competent jurisdiction in accordance with relevant state law.
- Families who are separated for any period of time should be immediately and meaningfully informed of and provided mechanisms to locate, communicate, and reunite with one another.
- Reuniting separated families should remain a priority, including ensuring that, where appropriate, all legal proceedings are consolidated to ensure that parents or children do not risk *in absentia* orders. Mechanisms for identifying and locating physically separated children will expedite prompt reunification.

Subtopic #1: End the Practice of Family Separation Except in Rare and Exceptional Circumstances

It is imperative that the next administration immediately take steps to end the needless and forceful family separations that have been central to the Trump administration's border policies, and to recognize the importance of family unity not only for parents/legal guardians traveling with minor children, but also of other configurations of family members who may have journeyed together to the border to seek protection and/or who DHS takes into custody at or near the border together.

The administration should apply the following policies and practices to three distinct but related situations in which DHS apprehends families or takes them into custody at or near the border.

Scenario 1: *Parent(s) and legal guardian(s) with one or more minor child(ren) where there is no question of parent-child relationship and legal guardianship but where, subsequent to the process outlined below, there is a question of imminent risk or danger to the child(ren).*

Scenario 2: *One or more minor child(ren) traveling with an adult(s) who is either a parent (biological or not) or a guardian where there is question about parent-child relationship or legal guardianship (for example, a caregiver, such as uncle or grandparent, lacks sufficient proof of*

guardianship after evaluation). These cases could include, but would not be limited to, cases where the Trafficking Victims Protection Reauthorization Act (TVPRA) may require separation.

Scenario 3: *Other configurations of family members traveling together, including that of child(ren) with a parent or legal guardian where there is neither an imminent risk of danger nor a question of the parent-child relationship or guardianship. For example, one or two parents with multiple children, including adult children; spouses/partners traveling together; siblings, including where one or more siblings may be an adult; etc.*

Priority Action #1: A White House Order and DHS guidance are issued within 7 days of the new administration that requires DHS, in all three scenarios, to 1) consider family unity as a primary factor in all charging decisions, 2) consider the best interests of the child, as defined above, in all processing, custody, removal, and repatriation decisions, and 3) preference release from custody over detention.

Priority Action #2: Within 14 days of the new administration, issue and carry out ICE and CBP implementing memoranda outlining standards and practices for the processing of families that DHS arrests or apprehends. These implementing memoranda should outline 1) a process, consistent with U.S. law governing "unaccompanied alien children," for maintaining family unity throughout apprehension, charging, and release decisions and procedures, and 2) a robust and accountable screening process for cases that ultimately may result in temporary separations. The implementing memoranda should outline the following:

For Scenario 1:

1. DHS should not separate any child from their parent or legal guardian who has been apprehended or taken into custody at or near the border unless there is clear evidence that the parent or guardian has engaged or plans to engage in trafficking of the child, of serious and imminent physical harm to the child unrelated to the family's migration journey, or where the agency determines, after providing an opportunity for DNA testing if requested by the parent/legal guardian, that the accompanying adult is not the biological parent or legal guardian (see Scenario 2 below). DHS may not employ a presumption of serious or imminent physical harm to the child based on a parent or legal guardian's past criminal history.
2. When DHS apprehends or takes into custody a child or children and their parent or legal guardian together, DHS may only separate them if a state-licensed child welfare professional has screened the family members in private and in person and identified the above risks of trafficking or serious and imminent physical harm. Before DHS may separate a family, it must provide a written justification to every individual in the family unit in their primary language on why separation is necessary and in accordance with the risks outlined here.
    a. The next administration will need to consider whether state-licensed child welfare workers at the border should be employed by DHS, the U.S. Department of Health and Human Services (HHS), or be independent but co-located with

DHS, and may also wish to consider different options for the short term and the long term.

i. Child welfare expertise falls naturally under the jurisdiction of HHS, which already has long-term experience with the screening and care of unaccompanied children. Placing HHS-employed state-licensed child welfare workers at the border would give them some clear independence and distinction from those in immigration enforcement positions. During the Trump administration USCIS asylum officers were stationed at CBP facilities, making it clear that non-CBP/ICE officials can be co-located at CBP. However, involving HHS may raise concerns that this blurs the line between the enforcement role of DHS and the role of providing services to children and families of HHS. Were HHS employees to be co-located with CBP and ICE employees, the administration would need to design and implement safeguards at all levels to separate enforcement from child welfare and avoid the harms wrought by Trump administration policies deliberately disregarding this distinction.

ii. On the other hand, CBP already has funding appropriated to employ child welfare professionals, which may ease the transition into expanding the responsibilities of this role and its prevalence across all border facilities. Employing child welfare professionals within CBP would also keep immigration case decision-making within DHS's purview. Given that a top priority of the next administration must be to create a culture that ensures rights and human dignity are respected at the border, it would be consistent with that culture change to have state-licensed child welfare professionals—with appropriate oversight—employed by CBP.

b. Although CBP should not require a DNA test as a condition of non-separation, parents should be able to request a rapid DNA test at government expense as one option for establishing bona fide biological relationships. Prior to any such testing, CBP should inform adults both orally and in writing in a language they fully understand that DNA testing is strictly voluntary and should provide them an opportunity to indicate or decline written consent. The advisory should include information about alternative means of establishing a parent-child relationship, the types of family relationships that might not be detected through a parent-child DNA test (for example, step-parents, grandparents, and uncle or aunt relationships), and the possibility of revealing unexpected relationships. CBP should only use samples, results, or related data acquired from DNA testing for purposes of authenticating a parent-child relationship in cases of potential separation and must destroy the material within 7 days. Results that do not verify a claimed relationship cannot constitute the sole basis to justify separation. DHS should not store, disseminate, or otherwise share any such information, including with other federal agencies, contractors or third parties, for any other purposes. (Note: The order in *Ms. L* states that the government "must conduct DNA testing before separating an adult from a child based on parentage concerns.")

3. When DHS separates a family in accordance with the above process, the government should appoint both the parent/legal guardian and child(ren) independent legal representatives. The Department of Justice's (DOJ) "Appointed Counsel Program" for removal proceedings should cover appointed counsel for indigent separated parents/legal guardians and children *(See the DOJ Policies chapter for additional information)*. Appointed counsel is critical in light of the gravity of a separation and the constitutionally protected rights and interests surrounding family unity.
    a. In the case of a child, the government should appoint a child advocate immediately upon separation and should serve a notice of the appeals process (described below) upon the child as well as the child advocate.
4. DHS should provide notice of the agency appeals process (see the section on the appeals process below) along with the written justification for the separation. The notice of appeals process should include an advisal of rights and explanation of the process. The advisal of rights must include, at minimum, the constitutional right of the parent to the care and custody of their child and vice versa. DHS must provide the notice both in person, both orally and in writing, in a language the parent and child understand.
    a. Given the gravity of separation, a DHS official at every point of contact with a parent or legal guardian who has been separated from a child(ren) must affirmatively explain the appeals process to that person, both in person and in writing, in a language that they understand. For example, if a separated parent is transferred from CBP custody to ICE custody, the ICE officer assigned to their case would have to affirmatively ensure, both orally and in writing that the parent has received a meaningful advisal of the appeals process.

For Scenario 2:

1. When a caregiver (whether biologically related to the child or not) is unable to establish formal legal guardianship of a child(ren) with whom they were apprehended or taken into custody, DHS may only separate the child(ren) from the caregiver if a state-licensed child welfare professional has screened the family members in private and in person and is unable to verify legal guardianship, as part of that interview process or other means. Before DHS may separate the family, it must provide a written justification to every individual in the family unit in their primary language explaining why separation is necessary and in accordance with the law.
    a. In these cases, DHS should advise all family members in person and in writing, in a language each person understands, of 1) the communication that should be available to them for the duration of separation when DHS refers a child to ORR and 2) the safe and rapid reunification process for children deemed "unaccompanied" and referred to ORR through this screening.
    b. DHS should allow family members in this scenario to maintain contact in CBP custody, as outlined below, until DHS temporarily refers a child to ORR custody and releases the other family members from custody pending reunification.
    c. In cases where DHS removes or expels a parent or guardian from the United States prior to reunification, DHS must coordinate with the parent or guardian in

the home country. The U.S. government should guarantee regular communication and should facilitate reunification as soon as safely possible with the support of consular networks and potentially the U.S. Agency for International Development (USAID). *(See the Safe Repatriation section of the Children chapter for additional information).*

For Scenario 3:

1. Any configurations of family members a) not involving a minor child or not exclusively involving a parent/legal guardian and minor child or b) involving one or more minor children with clear guardianship established should be allowed to maintain family unity and should have family unity be a primary factor in any charging decision (for example, issuance of a Notice to Appear) and there should be a presumption of joint release from custody.

In all scenarios:

1. **Separated U.S. citizen children**. For cases involving separated U.S. citizen children who are ultimately sent to the custody of local child protective services (CPS). (*See the ICE Interior Enforcement section of the Children chapter for additional information).*
2. **Supervisory review of any decision to separate**. DHS and HHS should establish a clear supervisory review process of the recommendation to separate made by the state-licensed child welfare professional. DHS and HHS should conduct an initial supervisory review within 24 hours of an initial determination to separate, prior to any transfer out of CBP custody and no later than within 72 hours of total time in CBP custody. State-licensed child welfare professionals with higher seniority should carry out the review, akin to the system of supervisory review within the USCIS Asylum Division.
3. **Family communication and contact during separation in CBP custody**. Except where an imminent risk of harm has been identified through the process outlined above, family members separated for any reason while in CBP custody should be housed in close proximity and have frequent ability to have in-person contact interactions whenever possible. DHS should not aurally monitor or record these visits and communications. Very young children may need assistance to communicate, and staff should be sensitive to their need for age appropriate assistance. DHS may require non-contact visits only following an individualized determination by the state-licensed child welfare professional that a contact visit poses a danger to security or safety.
4. **Required steps, including notification of communications and appeals processes, upon transfer or release**. Any time that CBP transfers (or releases) separately any family members in any of the three scenarios outlined above CBP should notify all family members and ORR and ICE as applicable. CBP must notify the family members orally and in writing, in a language each person understands, and must include a clear process for how and when the family members will be able to communicate, the physical locations of family members, a clear explanation for next steps in their immigration case, and a clear explanation of the steps and process for appealing a decision to separate and potential safe reunification.

5. **Transparency.** DHS should track all separations of family members under the three scenarios outlined above, whether the separation is consistent with or outside the scope of these guidelines in this document, and should report them to Congress within 7 days. Reporting should include the grounds for separation with as much specificity as possible.

Priority Action #3: Parallel to the implementing guidance, the White House should convene a stakeholder working group to meet regularly for information-sharing, policy development and implementation, and tracking and oversight. This working group should consist of an equal number of 1) civil society stakeholders with direct experience serving or interacting with individuals who the government separated from a family member at the border, including those with expertise in child welfare and development and those with expertise in immigration law and policy; 2) relevant administration officials as outlined below ; and 3) those who experienced family separation, to the extent possible and in accordance with their wishes.

1. The stakeholder working group should be co-convened by DHS, HHS, and DOJ, and should include representatives of ORR, ICE (including Enforcement and Removal Operations and the Office of the Principal Legal Advisor), CBP and the Executive Office for Immigration Review (EOIR). The following officials should attend a minimum of 50 percent of the meetings: the Deputy Secretary of DHS, the Directors of EOIR, ICE and ORR, the Commissioner of CBP, and the Domestic Policy Council (DPC), including the children's coordinator role.
2. The working group should meet at minimum on a quarterly basis to review and discuss legal and policy guidance and practices pertaining to the government's separation of family members. The working group should regularly discuss and develop protocols for the following:
    a. Mechanisms to identify, track, and report family separation incidents;
    b. Mechanisms to provide a separated family member with written justification of the separation;
    c. Mechanisms to track the physical locations of separated family members in order to expedite reunifications;
    d. Mechanisms for a separated family member to report an incident of family separation, including:
        i. To verify the status, location, and disposition of any separated family member that DHS has identified or received reports of;
        ii. To facilitate communication between separated family members;
        iii. To petition for family reunification and release; and
        iv. To ensure that the legal disposition of separated family members is not undermined by separation, including through missing evidence relating to a legal case that is in the possession of only one separated family member but not other(s).
3. The working group should develop reports on a quarterly basis to share with the relevant Secretaries for purposes of tracking progress and ongoing gaps and concerns and to recommend concrete action items for consideration by the Secretaries of DHS, DOJ, and HHS.

Subtopic #2: Develop a Process for a Separation That Lasts More Than 72 Hours and That Includes a Reunification Mechanism

Priority Action #1: Within 30 days of the new administration, DHS and ORR should jointly develop and implement mechanisms for contact or communication between separated family members, including cases of parents/legal guardians separated from minor children, other caregivers separated from minor children, and other family members (for example, spouses/partners, siblings, cousins). These mechanisms must include, at minimum:

1. Dedicated CBP, ICE, USCIS, and HHS staff points of contact in all field offices and areas of responsibility, each with specific training on all policies and practices relating to family separation, including separations not involving parents/legal guardians and minor children. These staff should confer at minimum on a bi-weekly basis on any developments, with monthly reporting to the working group described in *Subtopic #1, Priority Action #3 above*.
2. Affirmative questions in all ICE, USCIS, and HHS intake processes and initial encounters on whether the individual has been separated from another family member at any point prior to or while entering custody.
    a. If an individual expresses at any point during intake or while in custody that they have been separated from a family member prior to or during custody at the border, such information should trigger, with the individual's consent –a clear process, developed in coordination with the stakeholder working group outlined in *Subtopic #1, Priority Action #3 above*, to ensure the prompt communication and reunification mechanisms outlined below. Such a process should involve, at minimum:
        i. A detailed explanation of the process to appeal such a separation, as outlined below.
        ii. Free and daily access to telephonic and video communication, at no cost to any separated family member, including between family members detained in a DHS facility, a DOJ facility (e.g. U.S. Marshals), an ORR facility, or released from government custody.
            1. In cases where a state-licensed child welfare professional has made a determination of serious and imminent risk to a child, and where that determination was the basis for separation, ORR should seek the recommendation of the child advocate who should be appointed as outlined in Priority Action #3 below to determine whether the communication and coordination to reunite described herein is appropriate.
        iii. A mechanism whereby USCIS affirmatively identifies cases where separated family members have filed for relief and, where appropriate and to ensure a fair and consistent legal process, consolidates these cases. USCIS should be responsive to recommendations from family members or their legal counsel in these situations. In cases of parents/legal guardians with children, the government should offer an opportunity for child(ren) and parents/legal guardians to each consult

with independent, appointed legal counsel regarding their legal options, including the child's right to proceed with their legal case independently of or jointly with a parent or legal guardian from whom they were separated. USCIS and EOIR should establish processes for expeditiously reviewing and approving requests by a child to join a parent or legal guardian's legal case.

iv. Facilitation of evidence sharing among separated family members. Where separated family members lack evidence due to it being in the possession of another separated family member, DHS and/or ORR should facilitate confidential and free sharing of any materials and documents that may be needed as evidence in multiple family member's legal cases. In no event should the agency assist with transmission review or retain these documents. *(See the ORR Unaccompanied Children Program Section of the Children chapter for guidance regarding permissible information sharing between DHS and HHS).*

3. Mandatory reporting and recordkeeping requirements for all government employees, contractors or subcontractors with responsibility for case management of an individual separated family member's case, to ensure that these employees, contractors and subcontractors record all their efforts to facilitate and ensure free, daily telephonic and video communication as well as merging of legal cases and sharing of documents between separated family members.

Priority Action #2: Within 60 days of the new administration, DHS and ORR should develop processes and mechanisms for expeditious reunification, including through prioritizing use of appropriate, case management-based alternatives to detention (ATDs) for families (*see the Custody & Alternatives section of the Interior Enforcement Chapter for additional information)*. ORR should develop and implement expeditious reunification mechanisms for all three scenarios of family separation described above. The following steps are particularly important given how often families have been and may continue to be needlessly and/or forcibly separated based on unjust determinations and despite DHS's lack of legal authority to make determinations of parental fitness. Processes and mechanisms should address the following circumstances underlying family separation:

1. Children separated from a caregiver or other family member who is not the child's parent or legal guardian (see Scenario #2 above), as well as separations involving other family configurations, biologically related or not, including but not limited to families of two spouses and multiple minor and/or adult children, of siblings where some are adults and others are minors, and of two spouses without children (see scenario #3 above). DHS and ORR must develop processes and mechanisms to track locations of separated family members to expedite reunification. DHS and ORR must also expedite processing of reunification by ORR for separated children and expedite release from CBP or ICE custody for separated caregivers, including through the use of ATDs such as release or community-based case management.
    a. DHS and ORR should give special consideration to children who have been separated from an adult caregiver acting as the child's parent/legal guardian,

whether or not the caregiver is biologically related to the child. The government should respect the family unity principle, whether by maintaining family unity in the first instance or by developing and implementing expedited procedures for safe and rapid reunification.

2. Children separated from a parent or legal guardian due to inability to establish parent-child relationship or formal legal guardianship (see Scenario #2 above). Processes and mechanisms must provide for safe and expedited reunification if and as soon as:
    a. One or all parties are released from DHS, ORR, U.S. Marshals Service (USMS) or Federal Bureau of Prisons (BOP) custody; or
    b. The parent or legal guardian's relationship to the child is established; or
    c. Any court of competent jurisdiction orders the reunification of the parent/legal guardian and child and/or the release of one or all parties from DHS, ORR, USMS or BOP custody; or
    d. DHS renders a final administrative decision finding that the separation was erroneous (see discussion below on the appeals process).
3. Children separated from a parent or legal guardian as described in Scenario #1 above. Processes and mechanisms must provide for safe and expedited reunification if and as soon as:
    a. One or all parties are released from DHS, ORR, USMS or BOP custody; or
    b. Any court of competent jurisdiction orders the reunification of the parent/legal guardian and child and/or the release of one or all parties from DHS, ORR, USMS or BOP custody; or
    c. DHS renders a final administrative decision finding that the separation was erroneous (see the section below on the appeals process).
4. Separations that resulted in one or more family members or caregivers returning to the home country. Processes and mechanisms must provide for expedited and safe reunification including the return of the family member(s) to the United States, whether through parole or another mechanism. Where the separated family members seek to reunify in the home country, the government should create a Safe Repatriation Plan (*see the Safe Repatriation Section of the Children Chapter for additional information*) before effectuating repatriation and reunification in the home country.

Priority Action #3: Within 30 days of the new administration, DHS and ORR should develop processes and mechanisms for appealing a DHS decision to separate children from parents or legal guardians. An agency appeal process should be available for circumstances in which either or both of the parent/legal guardian and child are in federal government custody following the separation. The agency appeal process should review and specifically relates to whether DHS made the separation in error. The process is not intended to make a legal determination of a parent's overall parental fitness or rights because DHS is not competent to make parental fitness or child abuse and neglect determinations regarding the constitutional custodial rights of parents or legal guardians. The agency appeal process should be an alternative to, rather than exclusive of, any other possible mechanism that separated parents/legal guardians and children may access to challenge a separation. The agency appeals process should include, at a minimum:

1. The empowerment of the newly-created DHS Office of Migrant Protection (OMP) (*see the Oversight and Accountability Section of the Interior Enforcement Chapter for additional information*) to hear appeals of CBP or ICE decisions to separate families. The OMP should ensure that staff attorneys involved with the appeals of family separations have family law experience. The OMP may work with CRCL on the creation of this process.
2. As described above, notice of the agency appeals process including advisal of rights and explanation of the process. DHS must give this notice at the time of separation, together with the delivery of the determination to separate. The advisal of rights must include, at minimum, the constitutional right of the parent to the care and custody of their child and vice versa. DHS must provide the notice both orally and in writing, in a language the parent and child understand.
    a. A DHS official at every point of contact with a parent or legal guardian who has been separated from a child(ren) must affirmatively explain the appeals process to that person, both in person and in writing, in a language that they understand.
    b. In the case of a child, the government should appoint a child advocate immediately upon separation and should serve the notice of the appeals process upon the child advocate as well as upon the child.
3. Recognition of the right to be represented by independent counsel in the appeal. As described above, the government should appoint counsel for every separated parent/legal guardian and child under the DOJ "Appointed Counsel Program" (*see the DOJ Policies Chapter for additional information*). In addition, the government should provide all separated family members with contact information for free legal services organizations in their geographic area.
    a. For adults detained in DHS custody, this should include contact information for the closest Legal Orientation Program (LOP) provider.
    b. For adults detained in USMS or BOP custody, this should include contact information for the federal public defender service.
4. A time period of 30 days for any of the separated parties to give notice to the OMP of their intent to appeal the separation decision. The party can give notice of the intent to appeal in writing or orally, in any language in which the party feels comfortable communicating.
    a. The government should toll the 30-day period automatically for an additional 15 days if it transfers any party more than once from the original location where the family was separated.
    b. The notice of intent to appeal the separation decision should operate to stay any removal, repatriation, expulsion, or other process designed to remove the appealing party and/or their separated family member(s) from the United States. DHS should develop policies and mechanisms to ensure such administrative stays of removal and/or expulsion attach automatically to the submission of the notice of intent to appeal the separation decision.
5. An administrative hearing on the appeal. No later than 30 days after receiving a party's notice of intent to appeal, OMP should schedule an administrative hearing to adjudicate the appeal. The appealing party should have the right to request and be granted

rescheduling of the hearing without cause. The hearing should occur at minimum by videoconference and in person whenever practicable.

   a. In organizing the hearing, the government should take into account to the greatest extent possible the appealing party's location and custody status , including by facilitating the hearing *in situ*, or using video conference equipment available in or near the detention facility.

6. A process for submission of evidence. The appealing party should have the right to submit any written arguments and documentary evidence, as well as witness lists, to OMP no later than 7 days before the hearing. The government should afford appellants in detention—whether ORR, CBP, ICE, USMS or BOP—confidential access to email, printers, scanners, fax machines and the internet for purposes of collecting evidence, preparing their appeal and communicating with their legal counsel.
7. The right to call witnesses. At the hearing, the appealing party should have the right to call and examine any witnesses, including the officials involved in the decision to separate, whether in person or by teleconference or videoconference.
   a. The appealing party should also have the right to waive the administrative hearing and request that OMP adjudicate the appeal on the basis of documentary evidence and written arguments alone.
8. Prompt adjudications of appeal. OMP should issue a written decision on the appeal no later than 15 days following the administrative hearing and/or submission of written arguments and documentary evidence in the case of waiver of a hearing. OMP should conduct a *de novo* review and may affirm or overturn the DHS component's decision or send the case back to the relevant DHS component for further action. OMP's decision is a final administrative decision of the agency.
   a. OMP must ensure the effective and prompt communication of the decision to the appealing party, including but not limited to translation of the written decision into the appealing party's native language and/or the facilitation of telephonic interpretation of the decision in the appealing party's native language.
   b. For children in ORR custody, an agency decision overturning the DHS component's decision to separate, or a DHS component's decision to rescind a separation determination following a remand from OMP, should operate to expedite the family reunification procedure with their parent or legal guardian. *See Priority Action #2 above for more information on expeditious reunification.*

<u>Subtopic #3: Implement Tracking, Transparency, and Oversight Mechanisms Relating to Family Separation</u>

Numerous reports, including from the Inspectors General of both DHS and HHS and the Government Accountability Office, have documented the lack of appropriate and necessary tracking mechanisms relating to the government's separation of family members in DHS and HHS custody. The government has also for years failed to respond meaningfully to Congressional inquiries and other oversight efforts relating to family separation. The following actions are intended to ensure that the government develops and implements meaningful

tracking measures relating to family separation and dramatically increases transparency and oversight with regard to both past and any future family separations.

Priority Action #1: The next administration should immediately designate an interagency working group (IAWG) to ensure consistency in tracking and reporting mechanisms for past and future cases of separations of family members in DHS custody. The DHS OMP should spearhead the IAWG, (*see the Oversight and Accountability section of the Interior Enforcement Chapter for additional information).*

The IAWG should conduct a review of stakeholder reports, media reporting and all relevant DHS and ORR Office for Civil Rights and Civil Liberties and Office of Inspector General reports issued since 2016. The IAWG should document concerns with recording, tracking and reporting family separation and create a work plan to address deficiencies. The IAWG should also review all applicable appropriations and congressional oversight requirements. The IAWG should allow for regular public comment and input during its review and development of remedies.

The IAWG should specifically consider confidential measures by which USCIS may need to access information on separated family members for purposes of potential case consolidation in cases of asylum or other applications for relief, as outlined above in *Subtopic #2, Priority Action #1, paragraph 2.a.iii.*

The IAWG should prioritize the tracking of family separations lasting longer than 72 hours. As described in *Subtopic #2 above*, the government should track and report to Congress within 7 days any separation lasting longer than 72 hours. In these cases, the IAWG should track and monitor the investigation methods to continue justifying separation, track any delays or obstacles in such investigation, account for locations of separated family units and track the government's justifications for the ongoing separation, including whether there has been a risk of imminent harm to the child.

Subtopic #4: Remedy Past Family Separations

The government has engaged in the separation of families – both inadvertent and intentional – for many years; while the implementation of the Zero Tolerance Policy in May and June 2018 was the most notorious example of intentionally-inflicted separation, thousands of families both before and since have also been impacted and – in many cases – irreparably traumatized and harmed. The government can never undo these harms, but it does have the obligation to provide redress, relief, and engage meaningfully in efforts to repair the damage it did. The following actions outline a non-exhaustive list of actions the government should take with respect to the thousands of families who experienced separation, including those already deported.

Priority Action #1: The next administration should request that Congress establish a fund for children and parents/guardians whom the prior administration needlessly separated pursuant to its "zero tolerance" policy or related immigration deterrence practices that began as early as 2017. Within 60 days, DOJ should establish an independent office to convene a task force and

prepare to administer the fund, similar to the context of Japanese internment through the Office of Redress administration. The next administration should incorporate the fund and the staffing required to administer it into its Presidential Budget Request, building off figures from existing litigation relating to family separation. Also, within 60 days, the next administration should convene a task force to determine how to most expeditiously reach families and disburse reparation funds, including outreach, accessibility, etc. The taskforce should include representation from immigrant communities impacted by these policies.

Priority Action #2: The next administration should, as part of the redress fund, offer comprehensive mental health services to remedy the trauma it caused to families who experienced family separation, including to family members who remain separated and/or families or family members who have since been deported. These mental health services should be evidence-based and trauma informed, designed especially to address the psychological and neurobiological consequences of forcible separation. (see also *Ms. JP et al v. Sessions*, No. 18-06081 (C.D. Cal. filed July 12, 2018), see Complaint ¶¶148-163).

The government should offer parents and children whom it separated, whether that separation occurred under the Zero Tolerance Policy or otherwise, screening to determine appropriate treatment plans. Licensed, trauma-informed mental health professionals with experience in trauma-focused cognitive behavioral therapy, child parent psychotherapy, and/or parent-child interactive therapy for traumatized children should conduct the screenings. The next administration should establish a steering committee composed of mental health professionals with relevant experience to lead this screening process.

While treatment plans should be tailored to each family's needs, they should include the follow baseline factors:

a. Services should be provided for both children and parents, where parents are part of the trauma intervention provided for children. Treatment plans should also consider the inclusion of individual services for parents separate from any joint services with their child(ren).
b. In cases where families remain separated, services should be available and provided separately for each of the impacted parents and child(ren), including to anyone who has already been removed, until the family is reunified.
c. Services should be delivered in a culturally competent and linguistically sensitive manner.
d. Services should be provided in an environment conducive to effective treatment, that is, family and community-based placements and never carceral settings.
e. Services should continue for a sufficient period of time until the mental health professional determines that further treatment is not necessary.

Priority Action #3: The next administration should immediately direct DOJ to be amenable to prioritize settlement or modify its stance in any ongoing litigation in which DOJ takes a position of defending or denying government involvement in family separation cases. This should include damages actions filed by separated families in federal court as well as pending

administrative complaints filed under the Federal Tort Claims Act (FTCA). The next administration should also instruct DOJ attorneys to offer immigration relief as part of family separation damages case settlements, including those filed under the FTCA. Such relief has ample precedent in U.S. law, for example the ABC settlement/NACARA. The next administration should not oppose tolling arguments made by formerly separated families who file FTCA claims after the filing deadline at both the administrative and federal court stage, given that many families were deterred from filing under the previous administration due to fears of retaliation.

The DOJ should immediately develop a process to affirmatively contact impacted family members who may be eligible for new relief based on class settlements or be afforded the right to re-apply for protection.

Priority Action #4: The next administration should immediately direct DOJ, HHS, and DHS to expeditiously reunify all families that are still separated and wish to reunite, consistent with the expedited processes outlined in existing court orders as well as procedures developed pursuant to *Priority Action #2 in Subtopic #2 above.*

The next administration should grant humanitarian parole with expeditious processing to parents and guardians who DHS deported from the United States after separating them from their children, or where a separation resulted from the placement of one or more family members into programs such as the "Migration Protection Protocols," so that they can return to the United States to reunify with their children. Upon their return on parole, the administration should release them and allow them to apply for asylum or other protection. The next administration should instruct DHS to generously adjudicate humanitarian parole applications, including by waiving requirements for a fiscal sponsor and by approving applications whenever a prima facie showing is made that it would be in the best interest of the child to have their parent returned to the United States, or that the parent was coerced (for example, into signing removal documents), or was not given a meaningful opportunity to assert their asylum claim prior to their removal. The next administration should waive any filing fee for these humanitarian parole cases.

Priority Action #5 Access to asylum. The next administration should afford asylum seekers prejudiced by family separation an opportunity to present their claims for asylum and other immigration relief anew. Implementation mechanisms should include an OPLA policy memorandum instructing ICE trial attorneys to stipulate to relevant relief in any ongoing removal proceedings, as well as to join motions to reopen. The government should give these families a clean slate since they were wrongfully denied an opportunity to present their claim for asylum, for example, through expunging convictions for violating 8 U.S.C. § 1325 or 1326, rescinding *in absentia* removal orders, rescinding denials based on asylum ban 2.0, etc.).This could also include termination of proceedings in immigration court to allow individuals to apply for asylum affirmatively (notwithstanding the one-year filing deadline). The next administration should also consider class-based relief for impacted family members. *See Priority Action #2 above and also see the Redress section of the Humanitarian Protection Chapter.*

Priority Action #6: The next administration should restore any rights abdicated by members of families who have been affected by the threat of family separation, including through coercive measures such as being forced to choose between prolonged indefinite detention together or indefinite separation. Under 8 C.F.R. § 235.4, an individual's "decision to withdraw his or her application for admission must be made voluntarily[.]" Forcing a choice between prolonged indefinite detention and indefinite separation is coercion as it forces a parent to drop their asylum claim in order for their children to no longer be detained. *See Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 372-74 (C.D. Cal. 1982) (discussing "coercive tactics to cause members of the class to accept 'voluntary departure' to El Salvador"); *see also United States v. Tingle*, 658 F.2d 1332, 1336 (9th Cir. 1981) (finding officers' warning to parent, including that parent "might not see … two-year-old child for a while … patently coercive.").

Subtopic #5: Prioritize the Use of Alternatives to Detention (ATDs) for Families When Needed, and Never Use Family Detention

See the Custody & Alternatives section of the Interior Enforcement Chapter for additional information.

Children Chapter Appendix:
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