



**Written Statement of the American Civil Liberties Union  
Presented for the High-Level Global Migration Group Multi-Stakeholder Meeting:**

**“Protecting the Human Rights of All People in Vulnerable Situations  
Within Large Movements”**

**June 30, 2016**

Organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crime (UNDOC)

**I. Introduction**

The American Civil Liberties Union (ACLU) welcomes this timely meeting, in preparation for the High-level Plenary Meeting of the General Assembly, addressing large movements of refugees and migrants. This meeting is a critical and valued response on the refugee and migrant crisis unfolding around the world, and in particular, for refugees and migrants arriving at the U.S. southern border.

In recent years, the response of the U.S. government to the arrival of a large number of migrants from Central America—and women and young children in particular—seeking protection in the United States has been characterized by concerning abuse of migrants’ human rights in violation of international law. This statement focuses on access to justice and liberty for children and families seeking protection from devastating violence and attempting to assert the right to enter and remain in the United States. In particular, our written statement today centers on three areas where basic human rights obligations have been ignored at tremendous cost to children and families, arriving over the last several years in large numbers and seeking protection in the United States: (1) access to courts and international protection; (2) legal representation; and (3) freedom from detention and ill-treatment.

**I. Access to Courts**

The United States of America has a long tradition of providing protection to individuals fleeing persecution and violence—a historical tradition recognized and celebrated even by U.S. critics of the existing asylum and refugee system. In FY2014, the U.S. admitted 69,987 refugees and granted asylum to 25,199 individuals.<sup>1</sup> Moreover, U.S. domestic law has historically recognized the importance of fair deportation hearings for those facing expulsion<sup>2</sup> and the grave consequences that stem from forced removal.<sup>3</sup>

Both international human rights law and the domestic constitutional and statutory law of the United States guarantee certain basic legal protections to individuals attempting to claim protection through asylum and to defend against removal. International human rights law includes particular protections for migrant children<sup>4</sup> but also specifically recognizes the right of all immigrants to defend against deportation, to be represented in that proceeding, and to have their expulsion reviewed by a competent authority.<sup>5</sup> In addition, human rights law guarantees that all persons appearing before a judicial proceeding receive “a fair and public hearing by a competent, independent, and impartial tribunal.”<sup>6</sup>

However, the overwhelming majority of people expelled from the United States each year will never see an immigration judge and never have a hearing where they can adequately present a defense or pursue claims to remain in the United States. According to the most recent statistics released by the U.S. government (2013), over 83 percent of deportations were conducted by an immigration enforcement officer, *not* by an immigration judge.<sup>7</sup> Those so deported include families with young children and asylum seekers who were never afforded an opportunity to present their claims.

As a result of changes to U.S. immigration law over the past two decades, hundreds of thousands of people are now expelled from the United States after proceedings in which officers of the Department of Homeland Security (DHS)—who are not necessarily even lawyers, let alone judges—conduct all of the functions normally associated with a judicial process. Indeed, it was in response to the perceived large numbers of Cuban and Haitian migrants arriving in the United States in the early 1990s that rapid “summary removals” became the centerpiece of the U.S. expulsion system.<sup>8</sup> Justifying their use today, the U.S. government has similarly claimed that these processes speed the deportations of people who are unlawfully entering the United States and have no right to enter or remain in the country.<sup>9</sup>

For these immigrants processed beyond the courtroom and often immediately expelled at the international border upon arrival, DHS officers arrest, detain, charge, prosecute, judge, and deport. The penalties associated with their removal orders include not only expulsion, but also bans on reentering the United States, which in some cases last for the entire lifetime of the individual in question. This regime plainly violates the requirement under international law of an impartial and independent hearing,<sup>10</sup> and presents significant dangers for asylum seekers who may, predictably but erroneously, be deported by a border official without the chance to present their claim.

Recognizing the danger that asylum seekers may be deported when they arrive at an international border seeking assistance, the Office of the High Commissioner for Human Rights (OHCHR) reminded governments of their obligations to ensure that migrants are given “access to information on the right to claim asylum and to access fair and efficient asylum procedures.”<sup>11</sup> Moreover, it is a well-established international norm that only “competent authorities” should be empowered to issue removal orders “following consideration of individual circumstances with adequate justification in accordance with the law and international human rights standards, *inter alia* the prohibition of arbitrary or collective expulsions and the principle of non-refoulement.”<sup>12</sup>

The United States does have some procedures and policies in place to identify asylum seekers arriving at its borders so they can be referred to protection services, as described in more detail below (*see* I.A.2, *infra*). However, in practice, many *bona fide* asylum seekers are quickly deported at U.S. borders by immigration enforcement officers without being provided the opportunity to request asylum.<sup>13</sup> Instead they are quickly returned to the countries they fled in violation of U.S. *non-refoulement* obligations.

## **A. Families Arriving in the United States Seeking Asylum**

### **1. Failure to Refer Migrants for Determination of Need for Protection**

Article 14 of the Universal Declaration of Human Rights (UDHR) provides that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>14</sup> The 1967 Protocol relating to the Statue of Refugees, which binds the United States to respect Articles 2 through 34 of the Refugee Convention, recognizes “the right of persons to seek asylum from persecution in other countries.”<sup>15</sup> Similarly, the American Convention on Human Rights explicitly provides for the right of an individual “to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”<sup>16</sup> Thus, while not everyone may be eligible for asylum, all persons seeking such protection have

the right to request it and, if eligible, to receive its benefits. Supporting this right to claim asylum, the OHCHR specifically called upon States to ensure that asylum seekers can access this protection by (1) adequately training border officials who apprehend and screen arriving migrants; (2) providing migrants with information in their own language about their right to seek asylum; and (3) investigating and disciplining officers who “obstruct access to protection and assistance services by failing to refer migrants to appropriate protection and assistance services.”<sup>17</sup>

U.S. law also recognizes that asylum seekers arriving at a U.S. border should be provided with the chance to speak with an asylum officer and to make their claims<sup>18</sup>, but in practice many asylum seekers are wrongly deprived of this right.<sup>19</sup> Individuals who arrive in the United States without valid travel documents are subject to “expedited removal,” which permits a border patrol officer to deport them without seeing a judge and with very little review.<sup>20</sup> This includes adults, as well as children arriving with their parents, who border officials fail to identify as asylum seekers and thus are never referred for a “credible fear” interview.

In order for individuals fleeing danger to claim protection in the United States, immigration enforcement officers must identify them as asylum seekers. However, in many instances, border officers do not ask questions necessary (and required<sup>21</sup>) to identify an asylum seeker before ordering her deported, as found by two 2014 investigations, one by Human Rights Watch and the other by the ACLU.<sup>22</sup> The ACLU’s year-long investigation and research into expulsions that take place without a hearing found that DHS officials routinely fail to screen for asylum claims before issuing deportation orders; as a result, bona fide asylum seekers have been deported in violation of U.S. *non-refoulement* obligations under the Convention against Torture and the 1967 Protocol to the Refugee Convention, to which the United States is a party.<sup>23</sup> For example, one mother interviewed by the ACLU was issued a deportation order, along with her two- and twelve-year old children, when they arrived in the United States seeking asylum; a border patrol officer, instead of referring them to an asylum officer, issued deportation orders to each of the three.<sup>24</sup>

In the course of its investigation, the ACLU interviewed 89 individuals who were deported or returned at the U.S. border without a hearing (including 11 unaccompanied Mexican children); 55 percent said they were not asked whether they had a fear of returning to their country of origin. Only 28 percent said they were asked about their fear of returning to their country of origin by a border officer or agent; and yet, 40 percent of those asked about fear said they told the agent they were afraid of returning to their country but were nevertheless *not* referred to an asylum officer before being summarily deported. The overwhelming majority of these individuals were repatriated to Mexico, Honduras, El Salvador, or Guatemala. Many were women fleeing gang and domestic violence who may have had strong asylum claims, as suggested by a 2014 Board of Immigration Appeals decision that recognized domestic violence as a basis for asylum.<sup>25</sup>

Some of the individuals interviewed by the ACLU were physically attacked, kidnapped, and/or sexually assaulted when they were returned, without a hearing, to the very dangers they had fled. Others faced extortion and threats to their own and their families’ safety. One individual was murdered after he was deported. These individuals, however, had all been turned away by U.S. border officials without even the opportunity to explain their fears, sometimes with a deportation order they did not understand or had been coerced into signing. Since the ACLU’s report was published, and as the U.S. government’s expulsion of children and families along the southern U.S. border has increased, these incidents have continue to occur.<sup>26</sup>

Unfortunately, the U.S. government has a history of depriving asylum seekers of their right to a fair hearing of their claims for relief from persecution. In 2005, the United States Commission on International Religious Freedom (USCIRF) published a study on asylum seekers and border removals for which researchers observed the interviews between border officials and arriving migrants.<sup>27</sup> The study

found that in more than 50 percent of the interviews observed, border officials did not inform migrants of their right to seek protection if they feared being returned to their country. Two years later, USCIRF reported that its serious concerns about these practices had not been addressed and that these processes that bypass the courtroom were, instead, expanded.<sup>28</sup>

## ***2. Failure to Provide Adequate Procedures in Determining Protection Needs***

Although U.S. immigration laws allow many individuals to be summarily deported without ever seeing an immigration judge, they provide some minimal protection for asylum seekers. These statutory safeguards were enacted to ensure that asylum seekers—who frequently arrive without prior authorization or valid travel documents (particularly when fleeing persecution by the same governments that issue those documents)—have the opportunity to claim asylum in the United States rather than being immediately deported through the expedited removal system.

The Immigration and Nationality Act requires that the Department of Homeland Security refer individuals who claim a fear of return for a “credible fear interview” conducted by asylum officers who are part of the United States Citizenship and Immigration Services.<sup>29</sup> Individuals found to have a “credible fear” of persecution or torture are then referred to an immigration judge for an asylum hearing during which they may present their claim for asylum, including fact and expert witness testimony and documentary evidence.<sup>30</sup>

To be granted the right to an asylum hearing before an immigration judge, individuals must demonstrate a “credible fear” of persecution or torture, which is defined as “a significant possibility” that the individual is eligible for asylum under the Immigration and Nationality Act because of past persecution or has a well-founded fear of future persecution.<sup>31</sup> The reason for the low threshold at the credible fear stage is straightforward. An asylum claim is highly fact-specific and often will take a significant amount of time and resources to develop properly, and may require submitting expert testimony and extensive country conditions evidence. It is thus highly unrealistic for applicants in the expedited removal system, especially if unrepresented, to present an adequate asylum claim while in detention and under severe time constraints.

Despite the low standard that should be required for asylum seekers to establish a credible fear, numerous procedural problems often make it difficult for *bona fide* asylum seekers, especially those who are unrepresented (which is the overwhelming majority), to pass a credible fear screening. For example, individuals who have gone through the credible fear process report problems such as inaccurate translation, adversarial and even hostile interviewers, lack of privacy and confidentiality in the questioning (which takes place in close proximity to other migrants), and lack of explanation of the process—all of which can lead to erroneous findings that the individual does not have a credible fear of persecution. In some instances, asylum officers and immigration judges have also erred by demanding a higher showing than the low “significant possibility of persecution” threshold, which Congress intended and international law requires. The ACLU is currently litigating a group of consolidated habeas cases on behalf of detained Central American mothers and children who did not receive a substantively or procedurally fair opportunity to demonstrate that they are *bona fide* asylum seekers.<sup>32</sup>

### ***B. Unaccompanied Children***

As documented by the United Nations High Commissioner for Refugees, the majority of the children recently arriving in the United States from Central America are escaping violence, lawlessness, threats, and extortion, and may have strong claims to protection under human rights law.<sup>33</sup> In the past few years,

the number of children seeking protection at the U.S. border has risen dramatically, with an estimated 90,000 arriving in the United States in FY 2014.<sup>34</sup> Recognizing the swelling numbers of children arriving alone and the violence they are fleeing, President Barack Obama declared the unfolding crisis to be a humanitarian situation;<sup>35</sup> but at the same time, the response from the Obama administration and many in Congress has been to seek to dismantle, rather than reinforce, protections for non-citizen children seeking help in the United States.

Despite domestic law protections for unaccompanied children, children arriving alone in the United States to seek protection are at risk of being returned to danger without a hearing despite the “special care and protection” to which they are entitled under human rights law, and the years of advocacy and some legal reforms aimed at providing necessary safeguards.<sup>36</sup> This is particularly true of Mexican unaccompanied children who are exempt from some of the special safeguards in place for children arriving alone.

#### 1. *Repatriation of Unaccompanied Minors—Mexican Unaccompanied Children Arriving in the United States*

In 1985, the federal district court in *Perez-Funez* entered an injunction establishing that unaccompanied children must be advised of their right to a hearing before an immigration judge before they are presented with the option of taking “voluntary departure” – in other words, acceding to return to their country of origin without a formal deportation order.<sup>37</sup> Under the injunction, children from noncontiguous countries – i.e., all countries other than Mexico and Canada – cannot agree to “voluntary departure” unless they have *actually* consulted with an adult friend or relative, or a legal services provider. In contrast, the *Perez-Funez* injunction does not require mandatory consultation for children from Mexico and Canada; these children must merely be given the *opportunity* to consult with an adult friend or relative or with a legal services provider. Thus, the injunction allowed unaccompanied children from Mexico and Canada – and particularly from Mexico – to be given “voluntary departure” without ever having seen an immigration judge or having consulted with an adult friend or relative or a legal services provider.

As became clear in subsequent years, without additional protections, Mexican children continued to be routinely turned around at the U.S. border without any evaluation of the risks they faced if repatriated.<sup>38</sup> Partly in response to this ongoing problem, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”). The TVPRA sets forth certain critical procedural safeguards for unaccompanied children seeking refuge in the United States but, like the *Perez-Funez* injunction, most of those protections were strongest for children from “noncontiguous countries.”<sup>39</sup> If the government wants to expel these children from the United States, the government must place them in regular removal proceedings before an immigration judge, which prevents them from being expelled via any sort of streamlined or truncated removal procedures, such as expedited removal or pre-hearing voluntary departure.<sup>40</sup>

Unaccompanied children from contiguous countries (Canada and Mexico), however, can still be returned without a hearing before an Immigration Judge. The TVPRA did create some screening protections for children from Mexico and Canada to ensure they could access international protection. Specifically, the TVPRA requires that any border officer who apprehends an unaccompanied Mexican or Canadian child must interview the child and confirm that he or she (i) is *not* a potential victim or at risk of trafficking, (ii) has *no* possible claim to asylum, and (iii) has the capacity to voluntarily agree to go back home.<sup>41</sup> Only if all three criteria are met can CBP repatriate the unaccompanied Mexican child without a hearing—and only if the child consents to repatriation.<sup>42</sup> Thus, the TVPRA presumes that an unaccompanied Mexican child needs special protection, and requires CBP to ensure that the child does not need such protection before returning her to Mexico. In practice, however, in practice, the screening process has been ineffective at best.

## 2. *The TVPRA in Practice*

At the U.S. border with Mexico, in spite of the TVPRA's provisions, law enforcement officers put the burden on the child to speak up and articulate their claims for relief. Several studies, including one completed by the UNHCR, have shown that these DHS officers are not asking the required questions, which may anyway be difficult for young children – alone, afraid, and languishing in detention – to immediately comprehend or answer.<sup>43</sup> As a result, for unaccompanied Mexican children, rapid return to Mexico has become the default. According to available statistics, 95 to 96 percent of Mexican children arriving alone and apprehended by U.S. border officers are turned away at the border, rather than given a hearing and the chance to claim protection.<sup>44</sup>

That Mexican unaccompanied minors are returned at high rates does not mean, however, that they do not have meritorious claims. A recent UNHCR study, which included interviews with 102 unaccompanied Mexican children, found that 64 percent had potential international protection needs, particularly from violence and coercion to assist smugglers.<sup>45</sup> In 2014, Refugees International recently recorded that in Mexico, violent activities such as kidnappings and extortions are at “their highest levels in more than 15 years,” and found that children in particular have been victims of kidnapping, assassination, extortion, and disappearances.<sup>46</sup>

As the ACLU and others have found, U.S. immigration officers are not adequately conducting the required TVPRA screening to identify unaccompanied Mexican children with asylum or trafficking claims or who cannot independently consent to being returned. Of the 11 Mexican unaccompanied children interviewed by the ACLU in Sonora, Mexico, ranging in age from 11 to 17, only one, Hector, said that he had been asked about his fear of returning to Mexico; the others said they were not asked anything but their age and a name. Hector recalls: “I asked if there was any benefit [to seeing a judge] and the *migra* said, ‘No, there is probably no benefit. You just crossed through the desert so you’re going to be deported.’” Brian, an unaccompanied child from Nogales, Mexico, whose father is in Tucson, said he had been trying to enter the United States since age 14 but in his three attempts, he had never been asked about his fear of returning to Mexico or if he wanted to see a judge.

Even where officers are attempting to conduct the screening, many do not speak Spanish despite working with a largely Spanish-speaking population. Most unaccompanied children interviewed by the ACLU said the CBP officers spoke only English and did not use an interpreter. None of the unaccompanied children interviewed by the ACLU in 2014 spoke any English at the time of their apprehension (and two of them spoke an indigenous language and knew very little Spanish).<sup>47</sup>

Two thorough investigations, one conducted by Appleseed between 2009 and 2011 and the other by the U.N. High Commission for Refugees (UNHCR), found that the majority of Mexican children arriving alone are quickly returned due to significant failures in the TVPRA screening.<sup>48</sup> The 2014 UNHCR investigation concluded that the “virtual automatic voluntary return” of Mexican children is due to systemic problems, including DHS officers’ failure to understand and implement the TVPRA screening.<sup>49</sup> According to the study, which was based on in-person observation of TVPRA interviews, “[t]he majority of the interviews observed by UNHCR involved what was merely perfunctory questioning of potentially extremely painful and sensitive experiences for the children. And in the remainder, the questioning, or lack of questioning, was poorly executed.”<sup>50</sup> The report concluded that 95.5 percent of unaccompanied Mexican children apprehended by Customs and Border Protection (“CBP”) are returned across the border—not because they did not have claims but because “CBP’s practices strongly suggest the presumption of an absence of protection needs for Mexican UAC [unaccompanied children].”<sup>51</sup> This is the exact opposite of what the TVPRA was designed to do—namely, to put the burden on U.S. immigration officials to show that a child would *not* be in danger if removed from the United States. The failures in screening inevitably lead to violations of U.S. *non-refoulement* obligations by denying

unaccompanied Mexican children a meaningful way to seek protection and articulate their fears of persecution or torture if repatriated.

Perhaps most disturbingly, and of particular relevance to this multi-stakeholder meeting, the UNHCR's 2014 investigation found that CBP officers do not understand what human trafficking means and are unable to identify child victims of human trafficking—which includes recruitment and coerced participation in the human trafficking industry. Although the U.S. Department of State recognized Mexico as one of the top countries of origin for victims of human trafficking in FY 2012, according to the UNHCR, “None of the agents or officers interviewed said they had ever identified a child trafficking victim or one at risk of trafficking.”<sup>52</sup> Rather, the UNHCR found, some officers expressed concern that they could not refer these children, who may have been coerced by gangs to participate as guides in the human trafficking industry, for criminal prosecution.<sup>53</sup> Indeed, in 2014, CBP initiated a “Juvenile Referral Program” to identify and detain hundreds of Mexican children working as foot guides for smugglers, in some cases holding them for months as punishment.<sup>54</sup> While it is unclear whether CBP officers are continuing to detain these children as suspected smugglers, advocates are concerned that the human rights and protections of these children are being ignored and that, instead of being treated as children with rights to assistance and protection, they are detained and/or rapidly returned to danger from the United States.

The U.N. Secretary-General recently called upon States to ensure that unaccompanied migrant children are provided with “an individualized, case-by-case, comprehensive assessment of their status and protection needs” conducted “in a child-rights-friendly manner by qualified professionals.”<sup>55</sup> The current system in place in the United States—rather than providing the careful, rights-protective and individualized assessment called for by the Secretary-General—leads to the rapid return of unaccompanied Mexican children who may have claims to remain in the United States and may face danger upon their repatriation. The U.N. High Commissioner on Human Rights’ report on migrants in transit recently reaffirmed the importance of protecting the principle of *non-refoulement* by ensuring that removal orders are “only [] issued following consideration of individual circumstances with adequate justification in accordance with the law and international human rights standards.”<sup>56</sup>

### **C. Criminalization of Migrants Seeking Protection in the United States**

Every year in the United States, thousands of migrants who arrive without prior authorization or travel documents—including those seeking protection in the United States—are prosecuted for illegal entry or reentry, and sentenced to prison in violation of human rights law. Even children have been deported and subsequently prosecuted for returning without authorization, sometimes without ever having the chance to see an asylum officer or an immigration judge.<sup>57</sup>

As the UN Special Rapporteur on the human rights of migrants, François Crépeau, has observed, “irregular entry or stay should never be considered criminal offences,” and measures that criminalize irregular migration, including but not limited to “the enactment of laws that penalize migrants in an irregular situation and persons that assist migrants” are not only inapposite to human rights but “have not been proven effective in deterring irregular migration.”<sup>58</sup> The Refugee Convention, recognizing that asylum seekers often must arrive without prior authorization or valid travel documents, provides that asylum seekers shall not be penalized for their illegal entry or presence. The UNHCR’s Detention Guidelines also require that detention not be “used as a punitive or disciplinary measure for illegal entry or presence in the country,” and yet that is exactly what U.S. prosecutions for illegal entry or reentry do.

Entering the United States without inspection is a federal misdemeanor punishable by up to six months in prison. In the four judicial districts where Operation Streamline is in effect, individuals prosecuted for



illegal entry under 8 U.S.C. § 1325 plead guilty in mass hearings (at times, 40 to 80 people, shackled in court), after only briefly consulting with an appointed criminal defense attorney, with little opportunity to discuss potential claims for immigration relief or challenges to their removability with the attorney, let alone present such claims to a court.<sup>59</sup>

Under 8 U.S.C. § 1326, reentering the country after being deported is a felony, and while federal public defenders representing individuals in these proceedings have more time for consultation and investigation, the consequences of a conviction are stark: conviction for illegal reentry can lead to two years of imprisonment for people with no prior criminal histories, and up to 20 years for people with more significant criminal records (including individuals who have been prosecuted more than once for returning to the United States).<sup>60</sup>

As earlier discussed, many asylum seekers are rapidly turned away, often with a formal deportation order, when they arrive at the U.S. border. Asylum seekers who have previously been expelled from the United States—including those who have tried to claim asylum in the United States but been ignored or denied that chance—are particularly harmed by § 1326. Currently, when an individual applies for asylum, the U.S. government’s policy appears to be to put the asylum claim on hold when the individual was previously deported even though, regardless of the merits of that deportation order, it may not impact whether the person has a bona fide asylum claim.

A report from the U.S. government’s Office of Inspector General in 2015 on Streamline prosecutions found, “Border Patrol does not have guidance on using Streamline for aliens who express fear of persecution or return to their home countries. Border Patrol’s practice of referring such aliens to prosecution under Streamline is inconsistent among Border Patrol sectors and may violate U.S. treaty obligations.”<sup>61</sup> Similarly, training materials provided to the ACLU in response to a FOIA request state that when asylum officers determine that an asylum seeker has a prior order of removal, the officer must inform ICE.<sup>62</sup> Further, “[t]he processing of the asylum application stops until the Asylum Office is notified either that the prior order has been reinstated or that the [ICE Special Agent in Charge] will not reinstate the order.”<sup>63</sup> Even if the individual has already applied for asylum, the guidance notes, he or she is not “automatically entitle[d]” to an interview with an asylum officer unless he or she is “specifically referred to an Asylum Office by the office that reinstated the order.”<sup>64</sup> In some cases, not only is the asylum process suspended, but an individual, brought to the attention of a DHS officer, can be referred for prosecution.

Prosecution for illegal entry or reentry has been promoted as part of the “Consequence Delivery System” and as a way to deter individuals who have been deported from returning without authorization. But for people with a genuine asylum claim, prosecution for illegal entry or reentry may further complicate their immigration future without being a meaningful deterrent, while unjustly depriving them of their right under the Refugee Convention to seek asylum.<sup>65</sup> Several asylum seekers interviewed by the ACLU were prosecuted for illegal reentry when trying to seek sanctuary in the U.S.; one was also prosecuted for use of a fraudulent visa, which she used to escape abuse and seek protection in the United States. Of those who were later able to apply for protection in the United States despite prosecution, all spent months or years in federal prison before they were able to claim protection.

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All asylum seekers, regardless of where they are from or whether they are children arriving alone or with their families, should be afforded their human right to seek asylum and not be penalized with civil or criminal detention for exercising this right. To ensure that the United States provides asylum seekers with this essential opportunity and does not violate its *non-refoulement* obligations, the U.S. government must correct its screening processes at the border, which in practice lead to the rapid removal of parents and



children with *bona fide* asylum claims. Border officials must be trained to honor and implement U.S. obligations under domestic and international law so that asylum seekers are not deported to danger without even the opportunity to present asylum claims to an independent authority.

### III. Legal Representation

Even individuals who receive an immigration hearing, however, continue to be denied critical human rights protections—notably, legal representation. International law recognizes the importance of legal representation and assistance, including in deportation proceedings and for migrant unaccompanied children in particular.<sup>66</sup> Although the U.S. Supreme Court has recognized the “drastic deprivation”<sup>67</sup> that deportation may entail for individuals who face persecution or torture in their home countries, current U.S. law fails to provide a right to legal representation to all persons facing deportation regardless of their wealth. Instead, only those who can afford counsel can typically access it.

A recent study of New York immigration courts showed that immigrants who are compelled to proceed without representation are six times more likely to lose their cases than those who have counsel.<sup>68</sup> While DHS always pays for an attorney to represent itself in removal proceedings, hundreds of thousands of immigrants, including children and detained asylum seekers, must defend against deportation without legal representation. A legal system that asks immigrants with no legal training to defend themselves in such a complex proceeding will fail to protect the human right to a fair hearing and also lead to violations of *non-refoulement* obligations where unrepresented asylum seekers cannot adequately present and support their claims.

While legislators have advanced proposals for the appointment of counsel for children, persons with serious mental disabilities, and other vulnerable groups, and a federal judge in California ordered the government to provide appointed counsel to individuals with mental disabilities who are detained in three states, the U.S. government continues to deport noncitizens who lacked representation in their deportation proceedings.<sup>69</sup> At the same time, the U.S. government continues to deport Mexican and Central American families with children without necessary safeguards.<sup>70</sup>

In July 2014, the ACLU and other advocacy organizations filed a lawsuit challenging the U.S. government’s failure to provide counsel for children facing removal (this case is on-going.)<sup>71</sup> Children as young as five or six years old have been forced to represent themselves in notoriously complex legal proceedings without assistance, a human rights violation this lawsuit seeks to remedy.<sup>72</sup> While the Obama administration has announced limited programs to provide legal assistance to some youth facing deportation hearings,<sup>73</sup> these programs do not come close to meeting the urgent need for legal representation for all children whom the government wants to deport.<sup>74</sup> In the meantime, children continue to appear alone in court every day.

The gap in legal representation is particularly stark for asylum seekers and other immigrants whom DHS chooses to detain, an issue of concern recently highlighted by the Inter-American Commission on Human Rights, including after its fact-finding visit to the United States.<sup>75</sup> Approximately 84% of immigration detainees are unrepresented in immigration court,<sup>76</sup> a crisis that the federal government has previously acknowledged.<sup>77</sup> In the absence of government-funded legal services it is inevitable that large numbers of people will go through immigration proceedings without legal assistance given the high cost of legal representation and the extremely limited availability of assistance in the remote areas where many detention centers are located.<sup>78</sup> Immigration detainees are often incarcerated far from their families and from legal service providers who could provide representation at an affordable rate. Because phone services in detention facilities are limited, expensive, and often non-operational, many attorneys decline to represent immigration detainees because they cannot afford the time and expense needed to communicate with their clients.<sup>79</sup>

The impediments to representation, stemming from the expansive U.S. immigration detention system, have deprived families and children of a fair hearing in immigration court. In August 2014, the ACLU and other advocacy groups filed a lawsuit to challenge the truncated and accelerated asylum proceedings at a new makeshift detention facility that existed in Artesia, New Mexico.<sup>80</sup> The policies in place at Artesia effectively precluded women and children from contacting and receiving assistance from attorneys while detained in this remote facility. As documented in the complaint, immigration officers at Artesia actively obstructed access to counsel by severely limiting phone access; denying attorneys a confidential meeting space with their clients; refusing to allow attorneys and potential clients to meet; and by misinforming detainees about the role of an attorney. For example, an immigration officer told a mother seeking asylum that an attorney would facilitate her deportation rather than help her defend against it.<sup>81</sup> While the U.S. government has since closed the Artesia facility, the problems that detainees faced there are emblematic of those affecting numerous other individuals held in facilities throughout the country.<sup>82</sup>

#### **IV. Detention of Families and Children**

International human rights law strongly disfavors the use of immigration detention, and rejects it completely for children. Both human rights and domestic law specifically recognize that, for children and asylum seekers, detention is an “exceptional measure”<sup>83</sup> and, if necessary, should only be permitted “as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention.”<sup>84</sup>

However, every year, the U.S. Department of Homeland Security imprisons hundreds of thousands of non-citizens in administrative immigration detention. In the summer of 2014, in response to the increased number of Central Americans arriving at the U.S.-Mexico border, the U.S. government dramatically expanded its detention of immigrant families, including those with young children. Prior to the summer of 2014, the United States had largely abandoned the practice of detaining immigrant families, maintaining only one residential shelter for immigrant families in Pennsylvania with capacity for 96 people. But in June 2014, the government abruptly reversed course, announcing plans to expand family detention. Currently, the government is operating family detention facilities in Karnes County, Texas, with almost 600 beds, run by the GEO private prison company, and in Dilley, Texas, with 2,400 beds, which is operated by the largest private prison company in the United States—Corrections Corporation of America.<sup>85</sup> Most recently, the federal government announced plans to contract with British corporation Serco to build yet another family detention center in Texas (one site voted against the new facility but another site in Texas is still being considered.)<sup>86</sup> The majority of the families detained in these facilities are Central American women and children who have fled extreme violence in their countries and are seeking political asylum.

Detention may exacerbate psychological problems for individuals who have fled trauma and deny them the opportunity to recover.<sup>87</sup> In addition, detention harms children’s health, including by negatively impacting their physical and psychological development, which may create long-lasting effects that plague once-detained children for their entire lives.<sup>88</sup> Being held in a prison-like setting, even for a short period of time, can cause psychological trauma for children and asylum seekers and increase their risk factor for future mental disorders. Indeed, the Inter-American Commission on Human Rights has previously recognized the “terrible psychological impact that detention can have” for children.<sup>89</sup> Similarly, the U.N. Special Rapporteur on torture, Juan E. Méndez, said in 2015, “The detention of children is inextricably linked – in fact if not in law – with the ill-treatment of children, owing to the particularly vulnerable situation in which they have been placed that exposes them to numerous types of risk.”<sup>90</sup> In addition to the devastating impact of detention upon children and asylum seekers generally, reports of conditions in family detention centers raise alarming concerns: there have been allegations of

abusive conditions at the different family detention facilities, including sexual abuse, threats by guards to separate mothers from their children, retaliation against mothers for engaging in actions to protest their detention, and inadequate mental health and medical care.<sup>91</sup>

When the U.S. government began detaining families *en masse* in mid-2014, it did so pursuant to a blanket “no-release” policy, the express purpose of which was to send a deterrent message to other Central Americans who might be considering migrating to the United States. As a result, many women and children remained in detention even though they were eligible for release on bond or recognizance and most had family members or friends residing in the United States who have offered them a place to live and support while their asylum cases are pending.<sup>92</sup> In December 2014, the ACLU challenged this policy in federal court, seeking a preliminary injunction to stop the government from detaining these families for deterrence purposes.<sup>93</sup> The district court concluded that the ACLU likely to succeed on this claim and blocked the government from locking up families for deterrence purposes, requiring instead that their detention be based on a finding of danger or flight risk.<sup>94</sup> Ultimately, the government announced that it would cease using deterrence as a basis for detention, but it continues to detain families, including those who are unable to pay high bonds, and it often requires families who are released to agree to wear painful and humiliating ankle monitors.<sup>95</sup>

Despite widespread advocacy about the harmful effects of detention on asylum seekers and children, the U.S. government has maintained family detention and continues to defend these practices in litigation. In 1997, after over a decade of litigation, the *Flores v. Reno* settlement agreement (“the Flores settlement”) created nationwide standards requiring that immigrant children be held in the least restrictive setting appropriate to their age and be released from custody without unnecessary delay to, *inter alia*, a parent, legal guardian, adult relative, individual specifically designated by the parent.<sup>96</sup> The government has recently taken the position that it does not apply to children who are accompanied by their parents and therefore does not limit or otherwise restrict the detention of accompanied children. In 2015, advocates challenged the U.S. government in federal court about its detention of children with their families in a non-secure, licensed facility as a violation of the children’s right to family unification.<sup>97</sup> Although the federal district court issued an injunction finding that the *Flores* agreement applies to all children, including those who are accompanied by their parents, sets clear limits on the detention of children in U.S. immigration custody, and clearly articulates a preference for release to a parent over another relative or community sponsor, the government has appealed this decision.<sup>98</sup> Specifically, the government contends that it needs to be able to use expedited removal against families and, in its view, the expedited removal statute requires that individuals be detained pending a positive credible fear determination.<sup>99</sup> In fact, however, the government is neither compelled to place families—or any asylum seeker—in expedited removal proceedings, nor must it detain them throughout the expedited process should it choose to use that process.<sup>100</sup> If on appeal the court’s decision in *Flores* supports the U.S. government position, children detained with their parent or parents in often remote facilities across the United States will lose the critical protections won and recognized almost two decades ago.

The move by the U.S. government to expand family detention and defend the detention of young children with their parents, in response to the larger number of migrant families arriving at its southern borders, is a reversal on its acceptance in recent years of the need to utilize alternatives to detention. In the past, for example, the United States has supported the Universal Periodic Review (UPR) recommendations that it “reconsider alternatives to detention,” “investigate carefully each case of immigrants’ incarceration,” and “adapt the detention conditions of immigrants in line with international human rights law.”<sup>101</sup> In its response to the 2015 UPR recommendations, the United States claims that we “actively utilize alternatives to detention where appropriate, and are working to shorten detention families may face while their immigration proceedings are resolved. Conditions at Family Residential Centers are continually being evaluated and improved.”<sup>102</sup> However, despite recognizing the importance of those fundamental

principles, the U.S. government's expansion and continued use of family detention directly contravenes the UPR recommendations and its obligations under international human rights law.<sup>103</sup>

## V. Conclusion

The U.S. response to the large number of migrants arriving at its borders in search of protection has been to exacerbate rather than remedy violations of migrants' human rights in its immigration system, expanding the detention of children and families and pushing these vulnerable migrants through rapid, inadequate expulsion processes with no or limited assistance. We appreciate the opportunity to participate in this U.N. multi-stakeholder meeting on the rights of refugees and other migrants arriving in large movements. The forthcoming High-level Plenary and the preparatory meetings present an opportune moment for the U.S. government to recommit to its obligations under international human rights law and to ensure that families and children fleeing violence and making the dangerous journey to the United States have access to protection measures and are treated fairly and with dignity when they arrive.

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<sup>1</sup> U.S. Department of Homeland Security, Office of Immigration Statistics. *Annual Flow Report: Refugees and Asylees: 2013*. By Daniel C. Martin and James E. Yankay. Washington, D.C.: U.S. United States Government Printing Office, 2014.

<sup>2</sup> *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) (recognizing that the Due Process Clause of the Fifth Amendment to the U.S. Constitution applied in cases where the government seeks to deport those who have already entered the United States.)

<sup>3</sup> *Ng Fung Ho v. White*, 259 U.S. 276, 284-85 (1922). See also *Padilla v. Kentucky*, 130 S.Ct. 1473, 1481 (2010) (“deportation is a particularly severe penalty”).

<sup>4</sup> For example, under the U.N. Convention on the Rights of the Child, which the United States has signed but not ratified, states are obliged to provide protection and care for unaccompanied children and to take into account a child's best interests in every action affecting the child. Convention on the Rights of the Child (CRC), adopted Nov. 20, 1989, GA Res. 44/25, Annex, UN GAOR 44<sup>th</sup> Session, Supp. No. 49 at 166, UN Doc. A/44/49 (1989), arts. 3, 22; see also I/A Court H.R., Juridical Condition and Human Rights of the Child,” Advisory Opinion OC17/02, paragraphs 58-59 (August 28, 2002), available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_17\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_17_ing.pdf). The decision to return a child to his or her country of origin, under international law, must take into account the child's best interests, including his or her safety and security upon return, socio-economic conditions, and the views of the child. U.N. Committee on the Rights of the Child, General Comment No. 6, at para. 84. If a child's return to their country of origin is not possible or not in the child's best interests, under human rights law states must facilitate the child's integration into the host country through refugee status or other forms of protection. *Id.* ¶79.

<sup>5</sup> The International Covenant on Civil and Political Rights (ICCPR) guarantees that “[a]n alien lawful in the territory of a State party” cannot be deported except “in pursuance of a decision reached in accordance with the law and shall, except where compelling reasons of national security require otherwise, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, art. 13; see also Body of Principles for the Protection of Persons Under Any Form of Detention and Imprisonment, Principle 17(2), G.A. Res. 43/173, Annex, U.N. Doc. A/Res/43/173 (Dec. 9, 1988) (right of all detainees to receive legal assistance if he or she is unable to afford a lawyer), available at <http://www.un.org/documents/ga/res/43/a43r173.htm>. According to the UN Human Rights Committee, the requirement of a competent, independent and impartial tribunal “is an absolute right that is not subject to any exception.” Human Rights Committee, General Comment 32, Right to equality before courts and tribunals and to a fair trial, U.N.Doc CCPR/C/GC/32 (2007), <http://www1.umn.edu/humanrts/gencomm/hrcom32.html>, para. 19. Similarly, Article 8(1) of the American Convention on Human Rights, signed by the United States in 1977, provides each person with “the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law” in the determination of their rights. American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System,

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OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm). Interpreting the American Convention on Human Rights, the Inter-American Commission on Human Rights has stated that deportation proceedings require “as broad as possible” an interpretation of due process requirements, and includes the right to a meaningful defense and to be represented by an attorney. Inter American Commission on Human Rights, Report No. 49/99 Case 11.610, Loren Laroye Riebe Star, Jorge Alberto Barón Guttlein and Rodolfo Izal Elorz v. Mexico, April 13, 1999, Section 70-1.

<sup>6</sup> ICCPR, art. 14.

<sup>7</sup> Department of Homeland Security, Office of Immigration Statistics, Annual Report, *Immigration Enforcement Actions: 2013*, September 2014, available at [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2013.pdf).

<sup>8</sup> See generally, Congressional Research Service, Immigration Policy on Expedited Removal of Aliens, at 3 (September 30, 2005), available at <http://fpc.state.gov/documents/organization/54512.pdf>.

<sup>9</sup> U.S. Congress, Committee on the Judiciary, U.S. Senate, “The Southern Border in Crisis: Resources and Strategies to Improve National Security,” S. Hrg. 109-1018 (June 7, 2005); Vice President Joseph Biden, Remarks to the Press and Question and Answer at the Residence of the U.S. Ambassador, Guatemala City, Guatemala (June 20, 2014) (“none of these children or women bringing children will be eligible under the existing law in the United States.”), available at <http://www.whitehouse.gov/the-press-office/2014/06/20/remarks-press-qa-vice-president-joe-biden-guatemala>; Interview with Secretary of Homeland Security Jeh Johnson, NBC News, Meet the Press, July 6, 2014 (video) (“The goal of the Administration is to stem the tide and send the message unequivocally that if you come here you will be turned around.”); Background Briefing from the Senior U.S. Department of State Official on Secretary Kerry’s Trip to Panama (July 1, 2014) (stating incorrectly that people who are not fleeing war zones can be returned to dangerous locations), available at <http://m.state.gov/md228646.htm>.

<sup>10</sup> ICCPR, art. 13, 14.

<sup>11</sup> U.N. Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights at International Borders*, Guideline 7, para. 5, A/69/CRP.1, 23 July 2014.

<sup>12</sup> *Id.* Guideline 9 ¶¶ 4 & 6.

<sup>13</sup> Sarah Mehta, Human Rights Program, AMERICAN CIVIL LIBERTIES UNION, AMERICAN EXILE, RAPID DEPORTATIONS THAT BYPASS THE COURTROOM (2014), available at [https://www.aclu.org/files/assets/120214-expeditedremoval\\_0.pdf](https://www.aclu.org/files/assets/120214-expeditedremoval_0.pdf). Excerpts from report attached as Exhibit A.

<sup>14</sup> Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, art. 14.

<sup>15</sup> Refugee Convention and Protocol, Introductory Note by the Office of the U.N. High Commissioner for Refugees, at 2 (Dec. 2010); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; 19 U.S.T. 6223.

<sup>16</sup> American Convention on Human Rights, art. 22(8); see also Inter-American Court of Human Rights, Advisory Opinion OC-21/14, *Rights and Guarantees of Children in the Context of Migration And/Or In Need of International Protection*, Official Summary, Aug. 19, 2014.

<sup>17</sup> OHCHR, *supra* note 11, Guideline 7.

<sup>18</sup> See AMERICAN EXILE, *supra* note 13.

<sup>19</sup> 8 C.F.R. § 235.3(b)(4).

<sup>20</sup> See 8 U.S.C. § 1225(b)(1)(A)(i), 1252(e)(2)(B); 8 C.F.R. § 235.3 (b)(2)(ii).

<sup>21</sup> The regulations governing expedited removal require that DHS officers use a form that includes a paragraph explaining asylum to individual processed for expedited removal. 8 C.F.R. 235.3(b)(2)(i).

<sup>22</sup> See HUMAN RIGHTS WATCH, “YOU DON’T HAVE RIGHTS HERE”: US BORDER SCREENING AND RETURNS OF CENTRAL AMERICANS TO RISK OF SERIOUS HARM (2014), available at <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>; AMERICAN EXILE, *supra* note 13.

<sup>23</sup> Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954 (implemented in US law through INA Section 208); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; 19 U.S.T. 6223.

<sup>24</sup> Interview with Hilda, Los Angeles, CA, March 20, 2014 (on file with the ACLU).

<sup>25</sup> See *Matter of A-R-C-G*, 26 I&N Dec. 388 (BIA 2014).

<sup>26</sup> See HUMAN RIGHTS WATCH, “YOU DON’T HAVE RIGHTS HERE”: US BORDER SCREENING AND RETURNS OF CENTRAL AMERICANS TO RISK OF SERIOUS HARM (2014), available at <https://www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk>; UNHCR, “Deported children face deadly new dangers on return to Honduras” Jan. 29, 2015,



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available at <http://www.unhcr.org/54ca32d89.html>; Sibylla Brodzinsky & Ed Pilkington, *The Guardian*, “US government deporting Central American migrants to their deaths,” October 12, 2015, available at <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>; Roberto Lovato, *Al Jazeera America* “Deported to death: The tragic journey of a Salvadoran immigrant,” July 11, 2015, available at <http://america.aljazeera.com/articles/2015/7/11/deported-to-death-the-tragic-journey-of-an-el-salvadoran-immigrant.html>; Esther Yu-Hsi Lee, *thinkprogress.org*, “Constantino Morales Warned He Could Be Killed If He Was Deported. Then He Was,” Apr. 9, 2015, available at <http://thinkprogress.org/immigration/2015/04/09/3644411/constantino-morales-death-after-deportation/>.

<sup>27</sup> UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF), REPORT ON ASYLUM SEEKERS IN EXPEDITED REMOVAL (2005), available at [http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum\\_seekers/Volume\\_I.pdf](http://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/Volume_I.pdf).

<sup>28</sup> USCIRF, EXPEDITED REMOVAL STUDY REPORT CARD: 2 YEARS LATER (2007), available at [http://www.uscirf.gov/sites/default/files/resources/stories/pdf/scorecard\\_final.pdf](http://www.uscirf.gov/sites/default/files/resources/stories/pdf/scorecard_final.pdf)

<sup>29</sup> 8 U.S.C. § 1225(b)(1)(B). This interview is intended to be a non-adversarial opportunity for the asylum seeker to speak about her basis for claiming asylum. As part of this review, and the asylum officer is required to “to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture.” 8 C.F.R. § 208.30(d). Individuals with certain criminal convictions or with prior removal orders are not eligible for asylum and are therefore put into a process called “reinstatement of removal.” The process for identifying asylum claims in that population is similar to the credible fear interview process, but must meet a higher standard of proof by showing a “reasonable fear” of future persecution or torture. 8 C.F.R. §§ 208.31; 241.8(e); *See also* American Exile, *supra* note 13 at 19–20.

<sup>30</sup> 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30. If a person is found not to have a credible fear, he or she may contest that finding and request a brief “review” of the credible fear determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B);(iii)(III); 8 C.F.R. § 208.30(g)(2); 8 C.F.R. § 1208.30(g)(2). If the immigration judge concludes that the individual does not have a credible fear of persecution, the asylum seeker has no recognized right to a full asylum hearing to present his or her case and is usually deported expeditiously. The opportunities for judicial review of an immigration judge’s decision are extremely limited, and, as a practical matter, most individuals with expedited removal orders are unable to challenge erroneous negative credible fear determinations. 8 U.S.C. § 1225(e). Legislation passed by Congress has been interpreted by the government as allowing only the most limited review of expedited removal orders a position that the ACLU has consistently challenged and is actively litigating. *Castro v. Department of Homeland Security, et al.*, 16-1339 (3d Cir. 2016).

<sup>31</sup> 8 U.S.C. § 1225(b)(1)(B)(v).

<sup>32</sup> *Castro v. Department of Homeland Security, et al.*, 16-1339 (3d Cir. 2016).

<sup>33</sup> United Nations High Commission for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (“UNHCR Report”) 39 (May 2014), available at [http://www.unhcrwashington.org/sites/default/files/UAC\\_Children%20on%20the%20Run\\_Full%20Report\\_May2014.pdf](http://www.unhcrwashington.org/sites/default/files/UAC_Children%20on%20the%20Run_Full%20Report_May2014.pdf). Similarly, the Women’s Refugee Commission’s report on unaccompanied minors found that even children who experienced dangerous and traumatic journeys to the United States through Mexico would repeat it to find sanctuary in the United States: “The conditions in Central America have deteriorated to such a point that, when the WRC asked the children if they would risk the dangerous journey north through Mexico all over again now that they had direct knowledge of its risks, most replied that they would. They said that staying in their country would guarantee death, and that making the dangerous journey would at least give them a chance to survive. Many of them expressed a longing for their homelands, stating that they would not have left but for fear for their lives.” Women’s Refugee Commission, *Forced From Home: The Lost Boys and Girls of Central America*, Oct. 2012 at 7.

<sup>34</sup> U.S. Department of Homeland Security, Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations, July 10, 2014, available at <http://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations>.

<sup>35</sup> Memorandum for the Heads of Executive Departments and Agencies, *Response to the Influx of Unaccompanied Alien Children Across the Southwest Border* (June 2, 2014) (on file with the ACLU); *see also* Dianne Solís and Alfredo Corchado, *Immigrant Children Seeking Sanctuary Face Bleak Future*, Dallas Morning News, June 7, 2014, <http://www.dallasnews.com/news/headlines/20140607-immigrant-children-seeking-sanctuary-face-bleak-future.ecce>; *see generally*, Congressional Research Service, *Unaccompanied Alien Children: An Overview*, June 23, 2014, available at <http://fas.org/sgp/crs/homesecc/R43599.pdf>.

<sup>36</sup> “[C]hildren seeking asylum, particularly if they are unaccompanied, are entitled to special care and protection.” Office of the UN High Commissioner for Refugees, *Guidelines on Policies and Procedures in dealing with*

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Unaccompanied Children Seeking Asylum (Feb. 1997); *see also* American Convention, art. 19 (entitling children to special protection); UN Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990, Preamble.

<sup>37</sup> *Perez-Funez v. INS*, 619 F. Supp. 656 (C.D. Cal. 1985). Although *Perez-Funez* was decided prior to 1996 and the introduction of most summary removal statutes at issue in this report, its protections for unaccompanied children survive. *See, e.g.*, 8 U.S.C. §§ 1232(a)(2)(B), (a)(5)(D).

<sup>38</sup> *See generally*, Betsy Cavendish and Maru Cortazar, APPLESEED, CHILDREN AT THE BORDER: THE SCREENING, PROTECTION AND REPATRIATION OF UNACCOMPANIED MEXICAN MINORS (Appleseed Report) (2011), *available at* <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

<sup>39</sup> For example, for unaccompanied children from noncontiguous countries (i.e. from all countries other than Mexico and Canada), the TVPRA requires that once a federal department or agency determines that it has an unaccompanied child in its custody, the agency must transfer the child to ORR custody within 72 hours. *See* 8 U.S.C. §§ 1232(a)(3), 1232(b).

<sup>40</sup> *See* 8 U.S.C. § 1232(a)(5)(D)(i); *see also* 8 U.S.C. § 1229a.

<sup>41</sup> 8 U.S.C. § 1232(a)(2). In addition to Form 93, which is the TVPRA screening form used to determine the existence of a trafficking or asylum claim, Mexican children are still supposed to be presented with the I-770 form, to establish their consent to voluntary departure. It is not clear what standard officers are using to determine whether a child has an asylum claim or is at risk of being trafficked.

<sup>42</sup> 8 U.S.C. § 1232(a)(2), (a)(5)(D)(i).

<sup>43</sup> *See* UNHCR, Confidential Report, FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012-2013 MISSIONS TO MONITOR THE PROTECTION SCREENINGS OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER (“UNHCR CONFIDENTIAL REPORT”) (JUNE 2014); *see also* Betsy Cavendish and Maru Cortazar, “Children at the Border: The Screening, Processing and Repatriation of Mexican Minors,” (2011), *available at*: <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>. The ACLU’s own investigation on summary removals and returns at the U.S. border includes interviews with unaccompanied Mexican children and will be released this winter.

<sup>44</sup> U.S. government statistics from Fiscal Year 2013, 17,240 Mexican unaccompanied children were apprehended at the border. And yet, during the same time period, ORR, which is responsible for the care and custody of unaccompanied minors during their immigration proceedings, reported only 740 Mexican unaccompanied kids in its custody. U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, *available at* <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children> (accessed October 14, 2014); U.S. Department of Health and Human Services, “About Unaccompanied Children’s Services”, *available at* [https://www.acf.hhs.gov/sites/default/files/orr/uac\\_statistics.pdf](https://www.acf.hhs.gov/sites/default/files/orr/uac_statistics.pdf) (accessed October 14, 2014); *see also* Betsy Cavendish and Maru Cortazar, APPLESEED, CHILDREN AT THE BORDER: THE SCREENING, PROTECTION AND REPATRIATION OF UNACCOMPANIED MEXICAN MINORS at 49 (Appleseed Report) (2011), *available at* <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>. UNHCR has similarly estimated that 95.5 percent of Mexican children are returned without seeing a judge. UNHCR, Confidential Report, FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012-2013 MISSIONS TO MONITOR THE PROTECTION SCREENINGS OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER (“UNHCR CONFIDENTIAL REPORT”), at 14, June 2014 (on file with the ACLU). This figure reflects all Mexican children in ORR custody, including those apprehended far from the border anywhere in the United States, and so likely significantly overestimates the number of Mexican unaccompanied children in ORR custody. Relatedly, figures from official Mexican immigration sources estimate that in 2013, 14,078 Mexican unaccompanied children were repatriated from the United States. Appleseed, *Letter to Congressional Research Service on Mexican Unaccompanied Minors* at 7 (May 23, 2014) (on file with the ACLU) (citing annual figures 2010-2014 from the Centro de Estudios Migratorios de la Unidad de Política Migratoria de la SEGOB).

<sup>45</sup> The 2014 UNHCR study based on interview of unaccompanied children found that 64 percent of Mexican children had potential international protection needs; of those children, “[32 percent] spoke of violence in society, 17 percent spoke of violence in the home and 12 percent spoke of both” while “[a] striking 38 percent of the children from Mexico had been recruited into the human smuggling industry—precisely because of their age and vulnerability.” UNHCR Report, *supra* n. 43, at 11.

<sup>46</sup> Refugees International, Mexico’s Unseen Victims, at 3-4 (July 2, 2014), *available at* <http://refugeesinternational.org/sites/default/files/070214%20Mexico%20Unseen%20Victims%20English%20letterhead.pdf>. Some Mexican children, Refugees International concluded, who come to the United States fleeing forced recruitment should be able to apply for asylum based on their use, by non-state actors, as child combatants. *Id.* at 7.



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<sup>47</sup> Interview on file with the ACLU, February 28, 2014, Agua Prieta, Sonora, Mexico.

<sup>48</sup> Betsy Cavendish and Maru Cortazar, APPLESEED, CHILDREN AT THE BORDER: THE SCREENING, PROTECTION AND REPATRIATION OF UNACCOMPANIED MEXICAN MINORS (Appleseed Report) (2011), *available at* <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>; UNHCR, Confidential Report, FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012-2013 MISSIONS TO MONITOR THE PROTECTION SCREENINGS OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER (“UNHCR CONFIDENTIAL REPORT”), June 2014 (on file with the ACLU).

<sup>49</sup> UNHCR Confidential Report.

<sup>50</sup> *Id.* at 36.

<sup>51</sup> *Id.* at 14.

<sup>52</sup> UNHCR, Confidential Report, at 27.

<sup>53</sup> *Id.* at 29.

<sup>54</sup> Joshua Partlow, *L.A. Times*, Mexican kids held for months as punishment for border-crossing, March 11, 2015, *available at* [https://www.washingtonpost.com/world/the\\_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b\\_story.html](https://www.washingtonpost.com/world/the_americas/mexican-kids-held-for-months-as-punishment-for-border-crossing/2015/03/10/311d319a-b2f2-11e4-bf39-5560f3918d4b_story.html); Center for Gender & Refugee Studies, University of Hastings, CHILDHOOD AND MIGRATION IN CENTRAL AND NORTH AMERICA: CUASES, POLICIES, PRACTICES AND CHALLENGES, at 8 (Feb. 2015), *available at* [http://cgrs.uchastings.edu/sites/default/files/14\\_WRC\\_Border\\_English.pdf](http://cgrs.uchastings.edu/sites/default/files/14_WRC_Border_English.pdf).

<sup>55</sup> United Nations, *Report of the Secretary-General, Promotion and protection of human rights, including ways and means to promote the human rights of migrants*, para. 79 (d)(August 7, 2014).

<sup>56</sup> United Nations Human Rights Council, SITUATION OF MIGRANTS IN TRANSIT, REPORT OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, Jan. 27, 2016, at 8, *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/012/91/PDF/G1601291.pdf?OpenElement>

<sup>57</sup> Data received by *The New York Times* from Immigration and Customs Enforcement suggests that between 2008 and 2013, 383 children were prosecuted for illegal entry or reentry and had no more serious criminal history; 301 of those children were Mexican. FY 2013 DHS data provided to The New York Times through a FOIA request, analyzed by the ACLU (on file with the ACLU).

<sup>58</sup> Statement by the UN Special Rapporteur on the human rights of migrants, François Crépeau, PGA Plenary Session – Criminalization of Migrants, “Mainstreaming a human rights-based approach to migration within the High Level Dialogue,” Oct. 2, 2013.

<sup>59</sup> Operation Streamline proceedings for illegal entry, in particular, have been criticized for their lack of due process. *See* ACLU, *Reform U.S. Approach to Border Prosecutions*, July 2014, *available at* [https://www.aclu.org/sites/default/files/assets/14\\_7\\_3\\_aclu\\_streamline\\_recommendations\\_final.pdf](https://www.aclu.org/sites/default/files/assets/14_7_3_aclu_streamline_recommendations_final.pdf); ACLU, *Immigration Reform should Eliminate Operation Streamline*, *available at* [https://www.aclu.org/files/assets/operation\\_streamline\\_issue\\_brief.pdf](https://www.aclu.org/files/assets/operation_streamline_issue_brief.pdf); *see generally*, HUMAN RIGHTS WATCH, *TURNING MIGRANTS INTO CRIMINALS* (2013), *available at* <https://www.hrw.org/report/2013/05/22/turning-migrants-criminals/harmful-impact-us-border-prosecutions>. Judges combine the initial appearance, arraignment, plea, and sentencing into a single hearing, sometimes taking as few as 25 seconds per defendant. Fernanda Santos, “Detainees Sentenced in Seconds in ‘Streamline’ Justice on Border,” *The New York Times*, Feb. 11, 2014, <http://www.nytimes.com/2014/02/12/us/split-second-justice-as-us-cracks-down-on-border-crossers.html>.

<sup>60</sup> 8 U.S.C. §§ 1325-1326 (2011); 18 U.S.C. § 3559 (2011).

<sup>61</sup> Department of Homeland Security, Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing* at 2 (May 2015), *available at* [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf).

<sup>62</sup> Department of Homeland Security, U.S. Citizenship and Immigration Services, “Reinstatement of a Prior Order,” at 1 (p. 14 of the FOIA response), March 20, 2014 (on file with the ACLU); U.S. Citizenship and Immigration Services, “Affirmative Asylum Procedures Manual,” Nov. 2007 (revised July 2010), at 136 (p. 49 of the FOIA Response)(on file with the ACLU).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> The Refugee Convention, art. 31(1).

<sup>66</sup> *See supra* note 3; *see also*, OHCHR, *supra* note 11 at para. 14 (on “providing migrants in detention with unconditional access to competent, free and independent legal aid as well as any necessary interpretation services”); Convention on the Rights of the Child (“CRC”), adopted Nov. 20, 1989, GA Res. 44/25, Annex, UN GAOR 44<sup>th</sup> Session, Supp. No. 49 at 166, UN Doc. A/44/49 (1989), art. 37(d) (“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality

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of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”); Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside of Their Country, CRC/GC/2005/6 at para. 21 (Sept. 1, 2005) (“unaccompanied children are referred to asylum procedures or other administrative or judicial proceedings, they should also be provided with a legal representative”) and paras. 33, 36, 69, *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2005%2f6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2005%2f6&Lang=en).

<sup>67</sup> *Woodby v. INS*, 385 U.S. 276, 285 (1966).

<sup>68</sup> STUDY GROUP ON IMMIGRATION REPRESENTATION, NEW YORK IMMIGRANT REPRESENTATION STUDY REPORT: PART II, ACCESSING JUSTICE II: A MODEL FOR PROVIDING COUNSEL TO NEW YORK IMMIGRANTS IN REMOVAL PROCEEDINGS, 2012, p. 1., *available at* [http://www.cardozolawreview.com/content/denovo/NYIRS\\_ReportII.pdf](http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf); *see also* Ramji-Nogales et al., “Refugee Roulette: Disparities in Asylum Adjudication,” 60 *Stanford Law Review* 295, 340 (2007) (showing represented asylum-seekers are three to six times more likely to win asylum).

<sup>69</sup> *Franco-Gonzalez v. Holder*, No. CV 10–02211 DMG (DTBx), 2013 WL 8115423 (C.D. Cal. Apr. 23, 2013).

<sup>70</sup> This summer alone, the U.S. government deported almost 300 women and children from two facilities (in Texas and New Mexico, respectively). Cindy Carcamo, “Nearly 300 women, children deported from immigration detention centers,” *THE LOS ANGELES TIMES* (Aug. 21, 2014), *available at*

<http://www.latimes.com/nation/nationnow/la-na-nn-ff-new-mexico-immigration-deportation-20140821-story.html>.

<sup>71</sup> *J.E.F.M. v. Holder*, Case 2:14-cv-01026-TSZ (W.D. Wa. July 9, 2014), *available at*

<https://www.aclu.org/immigrants-rights/jefm-v-holder-complaint>.

<sup>72</sup> Julia Preston, *Young and Alone, Facing Court and Deportation*, *N.Y. Times*, Aug. 25, 2012, at A1, *available at* <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-facedeportation.html?pagewanted=all> (describing six-year-old child in removal proceedings without counsel); *see also* Julie Myers Wood & Wendy Young, *Children Alone and Lawyerless in a Strange Land*, *THE WALL STREET JOURNAL*, Sept. 22, 2013, *available at* <http://online.wsj.com/news/articles/SB10001424127887324492604579083400349940432> (“We’ve seen children as young as 5 facing an immigration judge with no representation.”)

<sup>73</sup> For example, the U.S. government recently announced plans to provide \$9 million to fund attorneys for child refugees, with the intention of providing initial representation for approximately 2,600 children arriving at the southern U.S. border. Miriam Jordan, *U.S. Government to Provide \$9 Million for Legal Aid to Child Migrants*, *The Wall Street Journal* (Sept. 30, 2014), *available at* <http://online.wsj.com/articles/u-s-government-to-provide-9-million-for-legal-aid-to-child-migrants-1412106221>.

<sup>74</sup> In June 2015, the Government issued a Request for Proposals as part of an additional program that would fund direct representation of certain children who were previously in ORR custody and are in immigration proceedings in one of nine cities. Department of Health and Human Services, Legal Service Providers Solicitation Notice, RFP15-233-SOL-00264 (Jun. 15, 2015), *available at*

[https://www.fbo.gov/index?s=opportunity&mode=form&id=a0ad02223e2e3aa94eda83de4b4891f8&tab=core&\\_cvi=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=a0ad02223e2e3aa94eda83de4b4891f8&tab=core&_cvi=1). Yet, this and other government-funded counsel programs have simply not met the need for legal representation. As of September 2015 (the most recent publicly-available data), children in more than 32,700 pending immigration cases remained unrepresented. Transactional Records Access Clearinghouse, *Juveniles — Immigration Court Deportation Proceedings*, <http://trac.syr.edu/phptools/immigration/juvenile/> (last visited Oct. 16, 2015).

<sup>75</sup> Inter-American Commission on Human Rights, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*, OAS/Ser.L/V/II. 155, Doc. 16, July 24, 2015, *available at* <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>; Inter-American Commission on Human Rights, Press Release, “IACHR Wraps Up Visit to the United States of America,” (Oct. 2, 2014) (“The Commission notes that there is a shortage of lawyers who are willing and able to provide legal representation at low or no cost to the families detained, and likewise notes the difficulties expressed by organizations and individual attorneys who represent detained families in entering the center and being able to bring in with them tools such as phones and computers in order to work more efficiently on cases.”), *available at* [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/110.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/110.asp).

<sup>76</sup> VERA INSTITUTE FOR JUSTICE, *IMPROVING EFFICIENCY AND PROMOTING JUSTICE IN THE IMMIGRATION SYSTEM: LESSONS FROM THE LEGAL ORIENTATION PROGRAM*, May 2008, at 1, *available at* [http://www.vera.org/sites/default/files/resources/downloads/LOP\\_Evaluation\\_May2008\\_final.pdf](http://www.vera.org/sites/default/files/resources/downloads/LOP_Evaluation_May2008_final.pdf). Texas Appleseed, a non-profit legal services organization, found that 86 percent of immigration detainees in Texas were unrepresented in 2009. TEXAS APPLESEED, *JUSTICE FOR IMMIGRATION’S HIDDEN POPULATION: PROTECTING THE RIGHTS OF*

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PERSONS WITH MENTAL DISABILITIES IN THE IMMIGRATION COURT AND DETENTION SYSTEM, March 2010, p.13, available at [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=313](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=313).

<sup>77</sup> Executive Office of Immigration Review Statistical Year Book FY2010 at G1 (calling the large number of individuals representing themselves as “of great concern...”), available at <http://www.justice.gov/eoir/statspub/fy10syb.pdf>; DOJ’s Executive Office for Immigration Review has noted the challenges created by non-represented cases for court efficiency, and the National Association of Immigration Judges wrote to members of Congress that “when noncitizens are represented by attorneys, Immigration Judges are able to conduct proceedings more expeditiously and resolves cases more quickly.” Charles H. Kuck, Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices, p. 8, in U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, ASYLUM SEEKERS IN EXPEDITED REMOVAL (2005), available at [http://www.uscirf.gov/images/stories/pdf/asylum\\_seekers/legalAssist.pdf](http://www.uscirf.gov/images/stories/pdf/asylum_seekers/legalAssist.pdf); Letter from Dana Marks, National Association of Immigration Judges, to Members of Congress, March 22, 2013 (on file with the ACLU); see also Jennifer Ludden, “Immigration Crackdown Overwhelms Judges,” National Public Radio, February 9, 2009, transcript, available at <http://www.npr.org/templates/transcript/transcript.php?storyId=100420476>.

<sup>78</sup> HUMAN RIGHTS FIRST, JAILS AND JUMPSUITS, October 2011, p. 31, available at <http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf> (finding that 40 percent of all detention facilities are located more than 60 miles from an urban center).

<sup>79</sup> NATIONAL INSTITUTE FOR IMMIGRANT JUSTICE, ISOLATED IN DETENTION: LIMITED ACCESS TO LEGAL COUNSEL IN IMMIGRATION DETENTION FACILITIES JEOPARDIZES A FAIR DAY IN COURT, September 2010, available at <https://www.immigrantjustice.org/isolatedindetention>. The ACLU is currently litigating the issue of access to phone services for detained immigrants. See ACLU of Northern California, “ACLU Sues ICE Over Unfair Telephone Policy,” Dec. 19, 2013, <https://www.aclunc.org/news/aclu-sues-ice-over-unfair-telephone-policy>.

<sup>80</sup> *M.S.P.C. et al. v. Johnson et. al.*, Case 1:14-cv-01437 (D.D.C. Aug. 22, 2014), available at [https://www.aclu.org/sites/default/files/assets/filed\\_complaint\\_1.pdf](https://www.aclu.org/sites/default/files/assets/filed_complaint_1.pdf).

<sup>81</sup> *Id.* at para. 117.

<sup>82</sup> See, e.g., *Lyon v. ICE*, 13-cv-5878 (N.D. Cal. filed Dec. 19, 2013) (

<sup>83</sup> United Nations High Commissioner for Refugees (“UNHCR”), Detention Guidelines, 4.1.1 (2012); Special Rapporteur on the Human Rights of Migrants, Mission to the United States of America, U.N. Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008) (“Families with children should not be held in prison-like facilities. All efforts should be made to release families with children from detention and place them in alternative accommodation suitable for families with children.”); see also *Ng Fung Ho v. White*, 259 U.S. 276, 284-85 (1922). See also *Padilla v. Kentucky*, 130 S.Ct. 1473, 1481 (2010) (“deportation is a particularly severe penalty”).

<sup>84</sup> Human Rights Commission, General Comment No. 35 on ICCPR Article 9: Liberty and Security of person. See also UN Committee on the Rights of the Child (CRC), Committee on the Rights of the Child, The Rights of All Children in the Context of International Migration ¶ 78 (2012), available at <http://www.refworld.org/docid/51efb6fa4.html> (“States should . . . completely cease the detention of children on the basis of their immigration status.”); The United States has signed but not ratified the Convention on the Rights of the Child. Although not directly bound by the terms of the treaty absent ratification, as a signatory the United States may not engage in action that defeats the objectives of the CRC. See Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679 (“A State is obligated to refrain from acts that would defeat the object or purpose of the treaty when . . . it has signed the treaty”); see also Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997) (“the Flores Settlement”), available at [http://www.aclu.org/files/pdfs/immigrants/flores\\_v\\_meese\\_agreement.pdf](http://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf).

<sup>85</sup> Monitor Editorial Board, *Editorial: Detention facilities – is holding families the solution?* The Monitor, June 28, 2015, [http://www.themonitor.com/opinion/editorial-detention-facilities---is-holding-families-the/article\\_239277e4-1dcb-11e5-9212-13be33869930.html](http://www.themonitor.com/opinion/editorial-detention-facilities---is-holding-families-the/article_239277e4-1dcb-11e5-9212-13be33869930.html).

<sup>86</sup> Renée Feltz, *The Guardian*, “Texas officials vote against British firm’s plans for immigration detention center,” (June 15, 2016), available at <https://www.theguardian.com/business/2016/jun/15/texas-immigration-detention-center-serco-proposal-mexico-border>; Roque Planas, *Huffington Post*, “Obama Administration Wants Another Family Immigrant Detention Center,” (June 9, 2016), available at [http://www.huffingtonpost.com/entry/obama-administration-family-immigrant-detention-center\\_us\\_57599ba0e4b00f97fba78065](http://www.huffingtonpost.com/entry/obama-administration-family-immigrant-detention-center_us_57599ba0e4b00f97fba78065).

<sup>87</sup> Coffey, G.J., et al., The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum, *Social Science and Medicine*. 70, 2070-2079 (2010).

<sup>88</sup> International Detention Coalition, *Captured Childhood* at 50 (May 2012).

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<sup>89</sup> Inter-Amer. Comm. Hum. Rts., *Report on Immigration in the United States: Detention and Due Process* ¶368 (2010), available at <http://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf>.

<sup>90</sup> United Nations Office of the High Commissioner, Press Release, “Detention is inextricably linked with ill-treatment, children must be protected – UN expert,” March 10, 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15674&/35#sthash.M7OXCudG.dpuf>.

<sup>91</sup> Franco Ordonez, *Family Detention Centers Described As ‘Frightening,’ Abusive*, Star-Telegram, July 28, 2015, <http://www.star-telegram.com/news/nation-world/national/article29235463.html>; Ana Gamboa, *Sen. Leach condemns Abusive Conditions at Immigrant Detention Center*, Al Día News, March 7, 2016, <http://aldianews.com/articles/politics/immigration/sen-leach-condemns-abusive-conditions-immigrant-detention-center/42529>; Christina Parker, Judy Green, Bob Libal, & Alexis Mazón, *For Profit Family Detention: Meet the Private Prison Corporations Making Millions by Locking Up Refugee Families* (2014).

<sup>92</sup> See, e.g., Am. Mot. for Preliminary Injunction, *R.I.L.R. et al. v. Johnson*, 15-cv-00011-JEB, Ex. 9 (Decl. of R.I.L.R.); Ex. 10 (Decl. of Z.M.R.); Ex.12 (Decl. of W.M.C.); Ex. 16 (Decl. of G.C.R.) (Jan. 8, 2015).

<sup>93</sup> Amended Complaint, *R.I.L.R. et al. v. Johnson*, Case 1:15-cv-00011 (D.D.C. Jan. 8, 2015), available at <https://www.aclu.org/legal-document/rilr-v-johnson-amended-complaint>.

<sup>94</sup> Memorandum Opinion, *R.I.L.R. et al. v. Johnson*, Case 1:15-cv-00011 (D.D.C. Feb. 20, 2015), available at <https://www.aclu.org/legal-document/rilr-v-johnson-memorandum-opinion>.

<sup>95</sup> John Burnett, *As Asylum Seekers Swap Prison Beds For Ankle Bracelets, Same Firm Profits*, NPR (Dec. 3, 2015), <http://www.npr.org/2015/11/13/455790454/as-asylum-seekers-swap-prison-beds-for-ankle-bracelets-same-firm-profits>; Molly Hennessy-Fiske, *Immigrants object to growing use of ankle monitors after detention*, L.A. Times (Aug. 2, 2015), available at <http://www.latimes.com/nation/immigration/la-na-immigrant-ankle-monitors-20150802-story>.

<sup>96</sup> Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997) (“the Flores Settlement”), available at [http://www.aclu.org/files/pdfs/immigrants/flores\\_v\\_meese\\_agreement.pdf](http://www.aclu.org/files/pdfs/immigrants/flores_v_meese_agreement.pdf).

<sup>97</sup> Mot. to Enforce Settlement of Class Action, *Flores v. Lynch*, 85-cv-4544 (C.D. Cal. Feb. 2, 2015), Dkt. 100.

<sup>98</sup> Memorandum Opinion and Order, *Flores v. Lynch*, 85-cv-4544 (C.D. Cal. July 24, 2015), Dkt. 177.

<sup>99</sup> Gov’t Mot. to Expedite Briefing and Hearing Schedule for the Appeal, *Flores v. Lynch*, 15-56434 (Dec. 1, 2015), Dkt. 6; Gov’t Br., *Flores v. Lynch*, 15-56434 (Jan. 16, 2016), Dkt. 10.

<sup>100</sup> See Exhibit B. (Br. of Amici Curiae, *Flores v. Lynch*, No. 15-56434 (Feb. 23, 2016), available at <http://www.aila.org/infonet/ca9-amicus-brief-in-flores>).

<sup>101</sup> United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, 16th Sess., A/HRC/16/11, Jan. 4, 2011, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/100/69/PDF/G1110069.pdf?OpenElement>.

<sup>102</sup> Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review, Aug. 31, 2015 (rev. Sept. 16, 2015), available at <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>.

<sup>103</sup> Mission of the United States in Geneva, Switzerland, Addendum of the United States of America to the Report of the Working Group on its Universal Periodic Review, Aug. 31, 2015, available at <https://geneva.usmission.gov/2015/09/01/addendum-of-the-united-states-of-america-to-the-report-of-the-working-group-on-its-universal-periodic-review/>.