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Lutheran Immigration and Refugee Service



January 20, 2016

Mr. Emilio Álvarez-Icaza
Executive Secretary
Inter-American Commission on Human Rights
1889 F St. NW
Washington, DC 20006

Re: Thematic Hearing Request, 157th Period of Sessions
Human Rights Situation of Child and Family Migrants and Immigration Detention in the U.S.

Dear Mr. Álvarez-Icaza:

In accordance with Articles 61 and 66 of the Rules of Procedure of the Inter-American Commission on Human Rights, the undersigned Petitioners respectfully request a thematic hearing to address the human rights situation of child and family migrants and immigration detention in the United States. We ask that such hearing be scheduled during the upcoming 157th Period of Sessions of the Inter-American Commission on Human Rights. Should a hearing not be granted during the 157th Period of Sessions, we respectfully request a working meeting to discuss these urgent issues.

I. BACKGROUND

This request is submitted in light of several years of dialogue before the Commission on immigration detention issues in the United States and the Commission's own investigations into U.S. immigration enforcement and detention policies. The request is particularly timely given the publication in 2015 of the Commission's report entitled, "Refugees and Migrants in the United States: Families and Unaccompanied Children," which followed on the Commission's site visit to the U.S./Mexico Border region in 2014 and the thematic hearing held during the 153rd Period of Sessions on Migrant and Refugee Children and Families in the United States.

The hearing will provide an important opportunity to address the findings and recommendations contained in the Commission's report and provide updated information on the current state of U.S. processing and detention of migrant children and families in response to several key Commission recommendations. In addition, the petitioners wish to direct the Commission's attention to the emerging issue of immigration enforcement raids directed at Central American mothers and children, which involve serious human rights violations. Finally, we hope that this hearing will provide a forum to discuss mechanisms for systemic dialogue on issues involving U.S. treatment of migrant children and their families.

II. CURRENT SITUATION OF CHILD AND FAMILY MIGRANTS AND DETENTION

A. Expansive Family Detention and Absence of Due Process for Families in Immigration and Customs Enforcement (ICE) Custody

In its 2015 report, the Commission found that U.S. detention of migrant families raises grave human rights concerns. The Commission expressed concern about the expansive nature of family detention and the failure to respect the presumption of liberty, maintaining that "detention is a disproportionate measure in the majority of these cases."¹ The Commission further found problematic the lack of individualized determinations of the need to detain, noting that "families for whom there is capacity at an immigration detention center are automatically and arbitrarily being detained."² The Commission also "observed inadequate and disproportionately restrictive conditions, akin to a penal incarceration center," in the family detention centers.³ As a result, the

¹ IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children* 101 (Oct. 2015).

² *Id.* at 10.

³ *Id.* at 153.

Commission urged the United States “to desist from detaining families at all, unless it is an exceptional case – following an individualized analysis with a corresponding written decision.”⁴

The United States has not heeded these observations by the Commission, insisting on continued large-scale and arbitrary detention of families. The overwhelming majority of individuals in U.S. family immigration detention are mothers and young children who are seeking asylum or other forms of humanitarian protection.⁵ Detention of families persists at the family detention centers in Dilley and Karnes City, Texas, and in Berks County, Pennsylvania. The facility in Karnes City, Texas has recently expanded to allow for detention of more than 800 mothers and children while the Dilley facility is now fully constructed and can hold 2,400 mothers and children. The detention center in Berks County, Pennsylvania, which detains both mothers and fathers, can hold up to 84 individuals. Overall, family detention centers now have space to hold over 3,500 children and their parents.

Furthermore, while the United States announced last year that it would no longer consider general deterrence of future potential migrants in making individual detention decisions,⁶ the government has continued to assert that it is not legally prohibited from basing its detention policies on a deterrence rationale.⁷ In fact, the dramatic expansion of U.S. family detention was explicitly based on a deterrence strategy, and the facilities constructed under that strategy have not been dismantled.⁸ As Human Rights Watch has noted, the continued influence of a deterrence rationale is made evident by government statements that have: “repeatedly referred to the act of seeking asylum as ‘illegal migration,’ which wrongfully suggests that those fleeing

⁴ *Id.* at 102.

⁵ See e.g., Lutheran Immigration & Refugee Service and the Women’s Refugee Commission, *Locking Up Family Values, Again: A report on the renewed practice of family immigration detention*, October 2014 (finding that, as of September 2014, 98 percent of the individuals detained at the Karnes facility were seeking protection from persecution).

⁶ See DHS Press Release, *ICE Announces Enhanced Oversight for Family Residential Centers* (May 13, 2015), available at <https://www.ice.gov/news/releases/ice-announces-enhanced-oversight-family-residential-centers>. This announcement followed a court order which found it impermissible for the government to use deterrence as a factor in deciding whether to detain parents and children. See *R.I.L.R. v. Johnson* (Feb. 20, 2015 D.D.C.); see also Julia Preston, *Judge Orders Stop to Detention of Families at Borders*, THE NEW YORK TIMES, available at <http://www.nytimes.com/2015/02/21/us/judge-orders-stop-to-detention-of-families-at-borders.html>.

⁷ See DHS Press Release, *ICE Announces Enhanced Oversight for Family Residential Centers*; see also DHS Notice to the Court, *R.I.L.R. v. Johnson* (May 13, 2015 D.D.C.) (stating that “the Government maintains its position . . . that application of the [deterrence] policy was lawful at the time and would be lawful in the future if reinstated”).

⁸ In testimony before Congress, Secretary of the U.S. Department of Homeland Security Jeh Johnson proposed “an aggressive deterrence strategy,” including the rapid expansion of family detention, which would send a message to adults who brought their children with them: “we will send you back.” Statement by Secretary of Homeland Security Jeh Johnson Before the Senate Committee on Appropriations, July 10, 2014, available at <https://www.dhs.gov/news/2014/07/10/statement-secretary-homeland-security-jeh-johnson-senate-committee-appropriations>; Press Release, U.S. Dep’t of Homeland Sec., *South Texas ICE Detention Facility to House Adults with Children* (July 31, 2014), available at www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children (stating that repurposing of Karnes to house families was part of “‘DHS’ sustained and aggressive campaign to stem the tide of illegal migration from Central America”); Press Release, U.S. Immigration and Customs Enforcement, *ICE’s New Family Detention Center in Dilley, Texas to Open in December* (Nov. 17, 2014), <https://www.ice.gov/news/releases/ices-new-family-detention-center-dilley-texas-open-december> (stating that the Dilley facility was part of a policy aimed at “deterring others from taking the dangerous journey and illegally crossing into the United States”).

threats to their life or freedom are somehow acting illegally.”⁹ Detention based on a deterrence rationale violates the requirement that any deprivation of liberty be justified based on an individualized determination of the need to detain a particular migrant to meet legitimate government goals.¹⁰

The practices and policies of the United States relating to family detention have undergone some changes in recent months. In particular, while thousands of families are still held in harmful detention, many are detained for significantly shorter periods than was previously the case. These changes are largely attributable to rulings by a federal district court in Los Angeles, California, on July 24 and August 21, 2015.¹¹ These rulings found that the United States was acting unlawfully and violating its obligations to migrant children, set forth in the 1997 *Flores* settlement agreement, through its policies and practices relating to the detention of children and their parents in family detention centers. The court held that children, whether accompanied by parents or not, should generally be released promptly from detention and should not be held in family detention centers, which are secure facilities not licensed for the care of children. The court held that parents arriving with children should be released as well, except where the parent presents a substantial flight risk or danger to the community, in order to secure the rights of the children to be released preferentially to a parent.

The court decisions confirm the rights violations taking place and should have signified the end of family detention. Instead, the U.S. government has interpreted the decisions as permitting continued family detention.¹² In addition, the United States has registered its disagreement with the court’s interpretation of the *Flores* settlement agreement by appealing the decisions and successfully petitioning for an expedited briefing schedule before the appellate court.¹³ The U.S. government has made clear in its briefing to the appellate court that it does not believe that it should be limited in the amount of time it may hold a family in detention; thus, the minor but insufficient improvements in family detention that have taken place might well be repealed.¹⁴

⁹ Human Rights Watch, US: First Step to End Family Detention, June 24, 2015, available at: <https://www.hrw.org/news/2015/06/24/us-first-step-end-family-immigration-detention>.

¹⁰ IACHR, Report on Immigration in the United States: Detention and Due Process 147 (the “determination of whether a person should be incarcerated ought to be done on a case-by-case basis, taking into account the person’s circumstances”); UNHCR Detention Guidelines, UNHCR, Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention 7 (2012), available at <http://www.unhcr.org/505b10ee9.html> (hereinafter “UNHCR Guidelines”) (“detention policies aimed at deterrence are generally unlawful under international human rights law as they are not based on an individual assessment as to the necessity to detain”).

¹¹ Orders of Judge Gee, *Flores v. Johnson* (D. Cal. 2015). The court’s decisions indicate some flexibility for the exceptional use of family detention in individual cases in “emergency” situations defined by the Agreement, signaling that detaining a specific family for 20 days may not necessarily breach the Agreement if that is as fast as the government can accomplish release, in good faith, during an emergency. The government has misinterpreted the court’s ruling to mean that its recent shorter average detention periods signify compliance with the court’s order but has not made the threshold showing that an “emergency” exists and also continues to detain some families for significant periods of more than a month.

¹² See, e.g., Los Angeles Times, Judge Orders Prompt Release of Immigrant Children from Detention (Aug. 22, 2015) (quoting statement of the Department of Homeland Security).

¹³ Statement by Secretary Jeh C. Johnson on Southwest Border Security (Jan. 4, 2016), available at <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.

¹⁴ See Brief of the Department of Homeland Security to the United States Court of Appeals for the Ninth Circuit, *Flores v. Johnson* (Jan. 15, 2016).

Finally, the United States has adopted a practice of placing invasive electronic monitoring devices on those parents it releases. The monitoring devices constitute a restriction on liberty and are imposed automatically, without any individualized determination of need, for an indefinite period of time. In consequence, the ankle monitors restrict not only the mother's movements but that of her children as well. The imposition of these electronic monitoring devices is unnecessary and violates human rights standards.¹⁵

To further exacerbate the situation, upon release from detention, most families receive little to no information about their rights and obligations in the immigration process. Without appointed counsel and often placed on an expedited docket, many are unable to manage government requirements and prepare complex asylum cases on their own.

Numerous entities, human rights organizations and legal advocates have continued to document the violations of rights taking place through family detention and to call for the end of family detention practices. The U.S. Commission on Civil Rights studied family detention and found that family detention implicated serious liberty and due process violations, including arbitrary detention and improper impediments to accessing and utilizing legal counsel.¹⁶ Civil society groups have documented the experiences of children and their parents held in U.S. detention facilities, bringing attention to the negative psychological impact of detention, as well as violations of internationally accepted norms related to the right to adequate health care, the best interest of the child, and the right to respect for the integrity of the family. Due process

¹⁵ See, e.g., UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees 37* (2006) (“for the overwhelming majority of asylum seekers who have every incentive to complete the US asylum procedure, the use of [an] intrusive and stigmatising form of supervision” does not meet the tests of necessity and proportionality required by international law).

¹⁶ U.S. Commission on Civil Rights, *With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities* (Sept. 2015), available at http://www.usccr.gov/OIG/Statutory_Enforcement_Report2015.pdf.

violations, exacerbated by the failure to ensure detainees the right to counsel, have also been well documented.¹⁷

Described below are several reports and statements that may assist the Commission in its consideration of the relevant issues.

- The American Bar Association issued an extensive report in August 2015, which recommends the release of families from family detention centers after concluding:

[C]urrent family detention practices do not comport with ABA policy or basic constitutional and international human rights principles. The dramatic build-up of a large-scale detention system for families over the last year, based on a deterrence rationale, stands in fundamental contradiction to the principles consistently prohibiting deterrence as a justification for detention and requiring that any use of detention for immigration purposes hew closely to a legitimate non-punitive governmental objective. Even more generally, the widespread and vastly expanded use of detention for families over the last year runs directly counter to a presumption of liberty and the use of detention only in exceptional limited circumstances determined on an individual basis.

¹⁷ See, e.g., Human Rights Watch, US: Trauma in Family Immigration Detention, May 15, 2015, available at: <http://www.hrw.org/news/2015/05/15/us-trauma-family-immigration-detention>; Complaint regarding the Psychological Impact of Family Detention on mothers and children seeking asylum, submitted to the Department of Homeland Security Office of Civil Rights and Civil Liberties, June 30, 2015, by the American Immigration Council, the American Immigration Lawyers Association, and the Women's Refugee Commission, available at: <http://www.aila.org/advo-media/press-releases/2015/impact-family-detention-mental-health/complaint-crcl>; Complaint regarding Substandard Medical Care afforded children and mothers in family detention, submitted to the Department of Homeland Security Office of Civil Rights and Civil Liberties and Office of the Inspector General, July 30, 2015, by American Immigration Council, American Immigration Lawyers Association, Catholic Legal Immigration Network, Inc., Immigrant Justice Corps, Refugee and Immigrant Center for Education and Legal Services, and the Women's Refugee Commission, available at: <http://www.aila.org/advo-media/press-releases/2015/deplorable-medical-treatment-at-fam-detention-ctrs>; Supplemental Complaint regarding Substandard Medical Care afforded children and mothers in family detention, submitted to the Department of Homeland Security Office of Civil Rights and Civil Liberties and Office of the Inspector General, October 6, 2015, by American Immigration Council, American Immigration Lawyers Association, Catholic Legal Immigration Network, Inc., and Refugee and Immigrant Center for Education and Legal Services, available at: <http://www.aila.org/advo-media/press-releases/2015/crcl-complaint-family-detention>; Complaint regarding Coercion and Interference with Access to Counsel at the South Texas Family Residential Center (STFRC) in Dilley, Texas, submitted to the Department of Homeland Security Office of Civil Rights and Civil Liberties and Office of the Inspector General, September 30, 2015, by Catholic Legal Immigration Network (CLINIC), the American Immigration Council, Refugee and Immigrant Center for Education and Legal Services (RAICES), and the American Immigration Lawyers Association (AILA), available at: <http://www.aila.org/advo-media/press-releases/2015/coercion-intimidation-detained-mothers-children>; Letter Concerning Due Process Violations at Family Detention Facilities, submitted to USCIS and ICE, December 24, 2015, by American Immigration Council, American Immigration Lawyers Association, Catholic Legal Immigration Network, Inc., Refugee and Immigrant Center for Education and Legal Services, and Human Rights First, available at <http://www.aila.org/advo-media/aila-correspondence/2015/letter-uscis-ice-due-process>.

- The American Academy of Pediatrics expressed concern about family detention, by letter dated July 2015, in the following terms:

[C]ontinued detainment of any children and mothers in the existing facilities puts them at greater risk for physical and mental health problems and unnecessarily exposes children and mothers to additional psychological trauma. . . . Above all else, we urge you to remember that these are children. They are scared, vulnerable children, many of whom have been victims of violence, and they need our compassion and assistance. We urge you to do what’s best for their health and well-being.

- An extensive group of organizations and legal advocates issued a letter in August 2015 stating:

[We] write to strongly encourage the Administration, and specifically the Department of Homeland Security (DHS), to end its practice of sending families to detention at the Berks, Karnes and Dilley facilities. . . . In addition to our concern with the continued practice of family detention, we are troubled by what appears to be the recent large-scale use of electronic monitoring devices and other criminal justice models as alternatives to detention for some refugee families.

B. Raids Leading to Additional Family Detention and Rapid Deportations

On December 23, 2015, the *Washington Post* reported that DHS would soon initiate aggressive enforcement operations against vulnerable Central American mothers and children who arrived during 2014 and received orders of removal.¹⁸ The announcements regarding the raids underscored DHS’ continued focus on deterrence in responding to Central American asylum-seekers who sought to obtain protection in the United States.¹⁹

As a result of the operations, which began on January 2, 2016,²⁰ more than 100 mothers and children with deportation orders were rounded up and taken to the family detention center in Dilley, Texas for rapid deportation. The raids were carried out in an aggressive manner that did not respect the vulnerable status of the affected mother and children asylum seekers and have spread fear throughout the migrant community in the United States.²¹ Many of the mothers and children had work authorization and had been reporting to DHS on a regular basis –several were still on ankle monitors – but were nonetheless awakened in the early morning and pulled from

¹⁸ Washington Post, U.S. Plans Raids to Deport Families who Surged across Border (Dec. 23, 2015), available at https://www.washingtonpost.com/politics/us-plans-raids-to-deport-families-who-surged-across-border/2015/12/23/034fc954-a9bd-11e5-8058-480b572b4aae_story.html.

¹⁹ Washington Post, U.S. Authorities Begin Raids, Taking 121 Illegal Immigrants into Custody over the Weekend (Jan. 4, 2016), available at <https://www.washingtonpost.com/news/federal-eye/wp/2016/01/04/u-s-authorities-begin-raids-taking-121-illegal-immigrants-into-custody-over-the-weekend/>.

²⁰ Washington Post, Deportation Raids to Continue, Despite Outcry (Jan. 6, 2016), available at https://www.washingtonpost.com/local/social-issues/pre-dawn-raids-leave-us-immigrant-communities-paralyzed-with-fear/2016/01/08/5bdf664c-b412-11e5-a76a-0b5145e8679a_story.html.

²¹ *See id.*

their homes by DHS agents. DHS agents forcefully entered homes, often obtaining entry through threats, intimidation or deceit.²² Several women who had counsel said they were not given an opportunity to communicate with their attorneys during the raids. More than 140 members of Congress called the enforcement-focused policy a “failure” and asked for a halt in the raids.²³

The United States made women and children a specific enforcement priority for massive enforcement operations without sufficiently considering whether the targeted families had a full opportunity to pursue their claims for asylum or related protection. It is likely that many of the mothers and children arrested in the raids appeared for their immigration court hearings without counsel to assist them. Moreover, many of the families arrested in the raids had meritorious asylum claims that were not fully heard or presented in court and still had legal avenues they had not yet pursued.²⁴ In many cases, the mothers and children did not even understand that they had received a final deportation order or that they had only a short time to appeal that order. The Board of Immigration Appeals has halted the deportation of more than 30 mothers and children while it considers failings in their asylum proceedings, while other families have already been deported to extremely dangerous conditions in Central America.²⁵

C. Inadequate Emergency Shelter Placement for Unaccompanied Children

The United States has recently engaged in problematic practices regarding the custody of unaccompanied minors as well. In response to increased numbers of unaccompanied children arriving at the southern U.S. border again in recent months, the United States has opened several emergency and temporary shelter facilities.²⁶ While these facilities are operated by the Office of Refugee Resettlement (“ORR”) and not ICE, they nonetheless put children at risk. These facilities have been opened quickly and without adequate attention to the needs of children. Organizations like the Women’s Refugee Commission and Lutheran Immigration and Refugee Service have expressed concern that these facilities do not provide adequate education, access to legal advocates, and compliance with the federal Prison Rape Elimination Act.²⁷ The new facilities also house very large numbers of children, which is contrary to the best interests of the child and child welfare standards.

D. Abuses in Customs and Border Protection Processing and Facilities

²² The Huffington Post, ICE Lied To Get Inside Immigrants' Homes During Raids, Lawyers Say (Jan. 11, 2016), available at http://www.huffingtonpost.com/entry/ice-lied-to-get-inside-immigrants-homes-during-raids-lawyers-say_56942592e4b086bc1cd4e03f.

²³ Letter from Members of Congress to the President of the United States (Jan. 12, 2016) (attached).

²⁴ Houston Press, Why is it so Easy for the Feds to Deport Women and Children Fleeing Violence at Home? (Jan. 8, 2016), available at <http://www.houstonpress.com/news/why-is-it-so-easy-for-the-feds-to-deport-women-and-children-fleeing-violence-at-home-8055394>.

²⁵ CARA: 33 Mothers and Children Protected from Immediate Deportation (Jan. 13, 2016), available at <http://www.aila.org/advo-media/press-releases/2016/cara-33-mothers-children-protected-deportation>.

²⁶ See NPR, Feds to Open Shelters for Unaccompanied Minors from Central America (Dec. 25, 2015), available at <http://www.npr.org/2015/12/25/461005642/feds-to-open-shelters-for-unaccompanied-minors-from-latin-america>.

²⁷ Letter to Office of Refugee Resettlement Re: Emergency Shelter in Waxahatchie, Texas (Jan. 5, 2015).

The United States has also failed to address ongoing human rights violations in the processing and detention of unaccompanied children and families in Customs and Border Protection (“CBP”) facilities at the United States border. Conditions remain extremely poor in border facilities.²⁸ In its 2015 report, the Commission noted that it “considers that the conditions of detention at the [border] holding facilities [to be] inappropriate and unacceptable for detention beyond a few hours.”²⁹ The federal district court in California addressed this point as well, finding “deplorable conditions” in the border facilities where unaccompanied children and families are first held in government custody.³⁰ Despite these findings, conditions in the border facilities have not been improved.

In October 2015, DHS adopted detention standards to guide CBP’s actions.³¹ These standards could lead to improvements, particularly since they recognize the needs of women and children. However, their impact is likely to be limited, because the standards merely offer guidance and do not include adequate accountability provisions. They also do not adequately address the concern that children are routinely held in secure, punitive cells—windowless and small concrete holding cells or cage-like cells within a windowless warehouse. They also do not go far enough to protect asylum seekers. The standards have not yet been implemented and CBP officials have not been trained under the new guidelines. In the meantime, reports of grave abuse and mistreatment by CBP continue.³²

Furthermore, children in need of international protection are not always identified properly by CBP, particularly those from Mexico who may be returned without an opportunity to present their claims for protection. A United States government report found that “CBP repatriated about 95 percent of all Mexican [unaccompanied children] whom agents and officers apprehended during fiscal years 2009 through 2014, and 93 percent of Mexican [unaccompanied children] under the age of 14 during this time period,” despite the existence of indicators of trafficking or credible fear of return.³³

CBP also processes children and their parents without recognizing their status as asylum seekers. CBP fails to record statements of fear on processing documents, discourages asylum seekers from making asylum claims and fails to refer asylum seekers to the asylum adjudication process. Even when these families are subsequently able to access the asylum adjudication process, the statements recorded at the border by CBP agents—sometimes incorrectly and under harsh

²⁸ See, e.g., American Immigration Council, *Hieleras (Iceboxes) in the Rio Grande Valley Sector* (Dec. 17, 2015), available at <http://www.immigrationpolicy.org/special-reports/hieleras-iceboxes-rio-grande-valley-sector> (reporting on detention in border facilities and freezing temperatures and other problematic conditions in these facilities).

²⁹ IACHR, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, at 75.

³⁰ Orders of Judge Gee, *Flores v. Johnson* (D. Cal. 2015) (attached).

³¹ U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (Oct. 2015), available at www.cbp.gov/sites/default/files/documents/cbp-teds-policy-20151005_1.pdf; Women’s Refugee Commission, *New Detention Standards Advance Protection of Women and Children* (Oct. 5, 2015), available at <https://womensrefugeecommission.org/news/press-releases-and-statements/2318-cbp-detention-standards-2015>.

³² See *Doe v. Johnson*, No. 15-00250 (D. Ariz. filed June 8, 2015) (alleging that Tucson Sector Border Patrol holds men, women, and children in freezing, overcrowded, and filthy cells for days at a time).

³³ United States Government Accountability Office, *Unaccompanied Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody* (July 2015), available at: <http://gao.gov/assets/680/671393.pdf>

detention conditions—create difficulties in establishing the credibility of the claims and can lead to erroneous rejection of genuine refugees.³⁴

Finally, CBP regularly processes migrant children and their parents in ways that lead to the separation of families. Young people 18 years and older are sent to adult immigration detention facilities even when they arrive with their parents and/or siblings, leading to the breakup of family units and the isolation of vulnerable young adult asylum seekers who desperately need to be with their families. In most cases, fathers and children cannot be detained together, because the Dilley and Karnes facilities accommodate only mothers and children. Fathers, then, are often sent to adult detention facilities and separated from their wives and children who are sent to the family detention centers. In other cases, family units are arbitrarily and harshly divided in half, with the father and one or more children released to live in the community while the mother and other children sent to a family detention center. Still other families are separated during removal procedures, endangering women and children.³⁵

III. VIOLATIONS OF THE AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

The raids and widespread detention of children and their families, many of whom are asylum seekers, as well as mistreatment by CBP of children and families, raise concerns under multiple provisions of the American Declaration on the Rights and Duties of Man. Specifically, these policies and practices implicate the rights articulated in Articles 1, 5, 6, 7, 11, 17, 18, 25, and 27 of the American Declaration. Of specific concern are violations of the rights to liberty, security in person, family, freedom from attacks on family and private life, special protections due to children, health, access to courts, access to counsel and related due process rights, and the right to seek and receive asylum.

Based on its analysis of relevant human rights norms and the current situation of children and their families, the Commission has urged the United States to take the following steps, among others:

- a. “to end its practice of automatic and arbitrary immigration detention of families;”
- b. “to treat Mexican unaccompanied children with the same safeguards and procedures applicable to unaccompanied children from non-contiguous countries;”
- c. “to investigate claims of abuses and mistreatment committed by U.S. border agents and to prosecute and punish, where necessary, the agents responsible;”
- d. “to ensure that the best interests of the child principle is the guiding principle in all decisions taken with respect to children, including in immigration proceedings;” and

³⁴ See Human Rights Watch, *The Other Refugee Crisis: From Central America to the United States* (Sept. 2015), available at www.hrw.org/news/2015/09/21/other-refugee-crisis-central-america-us (relating a case in which an infant was recorded by CBP as having indicated an intention to come to the United States to work).

³⁵ See Jesuit Conference of Canada and the United States, *Our Values on the Line: Migrant Abuse and Family Separation at the Border* (Sept. 2015), available at http://jesuits.org/Assets/Publications/File/REPORT_2015_Our_Values_on_the_Line.pdf (“Two out of three (64.6%) migrants who crossed into the United States with immediate family members and were deported to Nogales were separated from at least one of those family members by the Border Patrol during the process of detention and deportation. . . Of those who were separated from immediate family members, 17 (13.1%) were separated from a child, and four of those 17 children were unaccompanied by another adult.”).

- e. “to ensure migrant and refugee children and families enjoy due process guarantees and are provided with a lawyer, if needed, at no cost to them if they cannot cover the costs on their own.”

The petitioning organizations seek a hearing to discuss the status of these recommendations and to address the urgent human rights situation affecting migrant children and their families in the United States.

IV. CONCLUSION

In light of the serious and numerous violations of the American Declaration and other international human rights instruments taking place, we respectfully request the Commission grant our request for a thematic hearing during which advocates will provide updates on the processing and detention of children and families in the United States, will seek to engage the United States on recommendations set forth in the report released by this honorable Commission, and will discuss and offer recommendations aimed at bringing the United States into compliance with its human rights obligations. We seek the hearing in recognition of the vital role the Commission has played and can continue to play by granting a hearing and thus engaging the United States in a dialogue at this critical juncture.

Respectfully Submitted,

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