



CONGRESSIONAL HISPANIC CAUCUS

Joaquin Castro | Chairman

116TH CONGRESS

April 17, 2020

The Honorable Chad Wolf
Acting Secretary
Department of Homeland Security
1880 2nd Street SW
Washington, DC 20024

The Honorable Robert R. Redfield, MD
Director
Centers for Disease Control and Prevention
1600 Clifton Road
Atlanta, GA 30329

Dear Acting Secretary Wolf and Director Redfield:

We are writing to express our grave concerns and to request information on the expelling of unaccompanied migrant children as part of the Department of Homeland Security's efforts to implement the Centers for Disease Control and Prevention's (CDC) March 20th order restricting the entry of certain individuals into the United States. Purportedly undertaken to prevent the spread of COVID-19, these expulsions have instead led to the immediate return of vulnerable unaccompanied children to their countries of origin or Mexico under unclear circumstances. This practice risks the lives and safety of children and, until established otherwise, deprives them of important procedural safeguards that Congress created – and passed into law with broad bipartisan support – to ensure that no child is returned to trafficking, exploitation, or other harm. Our country's response to the current public health crisis need not sacrifice our longstanding commitment to protecting children and combatting human trafficking. We urgently request that DHS halt these expulsions and ensure that all unaccompanied children are processed in accordance with the *Trafficking Victims Protection Reauthorization Act of 2008* (TVRPA) and domestic and international law, including the right to seek asylum.

Unaccompanied children who arrive at the border are a uniquely vulnerable population. Without the protection of adults or adequate means of their own, financial or logistical, they may fall prey to traffickers or extended networks of violence, abuse, and sexual exploitation. Children are also susceptible to predatory schemes of criminal organizations or gangs that have become prolific along the border.

Federal law has long provided procedural protections to unaccompanied children in recognition of their particular vulnerability to violence and exploitation, and challenges they face in navigating the U.S. immigration system alone. The TVRPA was designed to shield children from such risk and requires the U.S. Customs and Border Protection (CBP) to screen unaccompanied children from Mexico and Canada within 48 hours of apprehension for fear of persecution, risk or history of trafficking, and the ability to make an independent decision about

voluntary return. Unaccompanied children from these countries who have protection needs or who are unable to make an independent decision about withdrawing their request for admission are to be transferred to the care and custody of the Office of Refugee Resettlement (ORR) and placed into full immigration removal proceedings.

The TVPRA similarly requires DHS to afford full immigration removal proceedings to all unaccompanied children from countries other than Mexico or Canada and to promptly transfer these children to the care and custody of ORR, where they will be screened for protection needs. The role of ORR is to then ensure that the children are provided with appropriate shelter and care and are reunited with family or safe sponsors who can care for them throughout their immigration proceedings.¹ These provisions not only prevent the immediate return of children to dangerous conditions but facilitate their right under domestic and international law to apply for any legal protections for which they may be eligible, including asylum and other forms of humanitarian protection (See, Section 208 of the *Immigration and Nationality Act* and Article 33 of the Convention and Protocol Relating to the Status of Refugees).

The expulsion of unaccompanied children, including to Guatemala, Honduras, and El Salvador (also known as Northern Triangle countries), threatens to return children to countries plagued by insecurity, violence, and widespread criminal or gang activity without government protection. Beyond the clear danger return to these countries poses to unaccompanied children, in many instances such actions violate the principle of non-refoulement, which prevents a person from being sent to a country where they face “torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm.”² Non-refoulement is articulated in Article 33 of the Convention and Protocol Relating to the Status of Refugees, to which the United States is a signatory and which the U.S. Congress implemented through the 1980 Refugee Act.

Despite the existing law and initially stating that unaccompanied children would be exempt from the order, CBP has since made it clear that unaccompanied children are being returned to their home countries. According to a CBP statement, the agency will “work closely with [the children’s] home countries to transfer them to the custody of the government officials and reunite them with their families quickly and safely, if possible,” and will only allow exemptions on a case-by-case basis.³ As reported in the press, CBP guidance was issued that conditioned such exceptions on the approval of the Chief Patrol Agent of a given border patrol sector.⁴ Further noted in the press, the guidance omits details about any TVRPA protection screenings or procedures that would be undertaken to ensure that children are not returned to harm or are, in fact, able to reunify with family amid broad travel restrictions and measures in place in the countries to which these children are returning.⁵

¹ William A. Kandel, *Unaccompanied Alien Children: An Overview*, Congressional Research Service, October 9, 2019.

² United Nations High Commissioner for Refugees.

³ Tanvi Misra, *CBP Turns Back Unaccompanied Children, Citing COVID-19 Fears*, Roll Call, March 30, 2020.

⁴ Dara Lind, *Leaked Border Patrol Memo Tells Agents To Send Migrants Back Immediately – Ignoring Asylum Law*, ProPublica, April 2, 2020.

⁵ Lucas Guttentag, *Coronavirus Border Expulsions: CDC’s Assault on Asylum Seekers and Unaccompanied Minors*, Just Security, April 13, 2020.

Also documented by the press, CBP guidance makes it more difficult for a child to be considered unaccompanied and thus more likely to be expelled. In the *Homeland Security Act of 2002*, an unaccompanied alien child is one that has no parent or legal guardian in the U.S. or available to provide care and custody. In contrast, CBP guidance provides, through the introduction of a new term “unaccompanied juvenile,” that an unaccompanied child is one who is not accompanied by a relative.⁶ By using a much broader category of association to disqualify children as unaccompanied (i.e., expanding from parent to relative), CBP is able to summarily expel children under the pretext of returning family units.

Finally, it is not clear if a number of children from the Northern Triangle are being expelled to Mexico. As reported between March 21 and April 7, of the nearly 7,000 migrants who were expelled, 377 were minors. And while it was reported that after March 27, 120 were sent back to Northern Triangle countries, it is unclear if the remainder of the children were sent to Mexico or if there were any family or caretaking ties to that country.⁷

With these serious concerns in mind, we ask that you provide the following information regarding the expulsions of unaccompanied children:

- How many unaccompanied children has DHS expelled from the U.S. in relation to the March 20th CDC order?
- Are unaccompanied children being affirmatively screened for trafficking or other protection concerns prior to being removed from the U.S., following TVPRA requirements? Are children being referred to ORR; if so, how many have been referred since the March 20 order, and what is the basis for their referral?
- If unaccompanied children are not being processed pursuant to the TVPRA, what standard and process are being applied to afford protection? Are children able to access legal counsel and to seek review of any adverse determination by DHS officials? What documentation, if any, is DHS providing to unaccompanied children who are expelled to their country of origin, for instance, identity or necessary health documents?
- What actions are being taken by DHS to ensure that unaccompanied children that are deported to their home countries of El Salvador, Honduras, or Guatemala are returned to safe conditions? Have agreements been brokered with the governments of these countries to ensure appropriate protections are in place, including mitigating travel restrictions or other measures put in place in response to COVID-19 that may impede the safe repatriation of unaccompanied children and their reunification with family?
- Are unaccompanied children from the Northern Triangle countries being expelled to Mexico? If so, how many have been sent since the March 20th order and what process is employed to determine which children will go? What documentation is DHS providing

⁶ Id; Camilo Montoya-Galver, U.S. Expels 6,300 Migrants at the Border, Shuts Off Asylum Under Coronavirus Order, CBS News, April 19, 2020.

⁷ Ted Hesson and Mica Rosenberg, U.S. Deports 400 Migrant Children Under New Coronavirus Rules. April 7, 2020.

to unaccompanied children prior to their being expelled to Mexico? What is DHS doing to ensure that Mexico is placing these children in safe and secure conditions with adequate shelter, food, and access to health care?

- Are CBP agents checking temperatures or looking for other indicators of COVID-19 when unaccompanied children are first apprehended or held in CBP custody? If a child is believed to have COVID-19, what medical care is provided and what standard of CBP discretion is being exercised to make an exception of that child's expulsion under the CDC order?
- Given the vulnerable condition of unaccompanied children and the tremendous risk that they face of trafficking or abuse, will the CDC move to exempt them from the suspension of entry?

The matter of expelling unaccompanied children is extremely time sensitive as a matter of preserving lives, so we ask that you please respond to the above questions by April 20, 2020.

Sincerely,

Joaquin Castro
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CHC Second Vice Chair

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