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How To Ensure Vulnerable Central Americans Are Treated Fairly and Humanely and Are Protected from Deportation

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In early January, the Department of Homeland Security (DHS) conducted raids across the country resulting in the arrest of 121 Central American mothers and their children. The raids revealed that many of these families were denied due process and the opportunity to meaningfully seek humanitarian protection guaranteed under U.S. law. In fact, the Board of Immigration Appeals granted emergency stays blocking the deportation of 33 of the individuals arrested due to concerns about the fundamental fairness of the legal process. The raids upon these families also spread fear nationwide that unauthorized persons will be at heightened risk of arrest and deportation despite past declarations from the administration that enforcement would be targeted against “felons not families.”

Such aggressive enforcement tactics are unjustifiable against this highly vulnerable population in need of protection from persecution, rape and other extreme violence in El Salvador, Guatemala and Honduras. U.S. government statistics show that mothers and children from these countries are qualifying for asylum and other forms of humanitarian protection at very high rates.¹ The administration must recognize that this vulnerable population is in need of humanitarian protection and stop treating them as illegal border crossers.

AILA urges the president and DHS to halt the raids and any further deportations of this vulnerable Central American population. In responding to this situation AILA recommends that procedures be established that ensure these families receive fair and humane treatment and can meaningfully seek humanitarian protection under U.S. law. Specifically the president has the authority and should consider granting this vulnerable population the following forms of protection: Temporary Protected Status (TPS), humanitarian parole, and Deferred Enforced Departure (DED).

I. The administration should take the following immediate steps to ensure these families are treated humanely and have meaningful access to protections under immigration law.

- **DHS should stop fast-tracking the removal of families.** Rapid procedures like expedited removal and “rocket dockets” in immigration court undermine due

¹ Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration. A report by the Assessment Capacities Project (ACAPS), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.

process and substantially curtail the ability of traumatized asylum seekers to access protections under U.S. law.

- **The U.S. government should establish a system to ensure legal counsel is appointed for those who would otherwise go unrepresented.** Vulnerable children and their mothers should not be forced to navigate our complex immigration and removal systems alone. Counsel is the single most important factor in the success of an asylum claim.
- **Provide access to attorneys, child welfare experts, and better information at the border.** People who are clearly informed about their obligations and legal rights are more likely to meet those obligations. DHS should establish a system at the border processing facilities that provides expanded Legal Orientation Programs (LOPs), legal counsel, and professional case workers with experience working with traumatized children.
- **End family detention.** DHS should end the mass incarceration of Central American families and instead permit them to reunite with their families or other sponsors in the U.S. When necessary, DHS should use community-based alternatives to detention (ATD) to ensure court appearances.

II. AILA urges the president and DHS to renounce the use of raids and halt any further deportations of this vulnerable Central American population. Specifically the president should consider granting this vulnerable population humanitarian parole, Temporary Protected Status (TPS) and Deferred Enforced Departure (DED).

Temporary Protected Status (TPS)

AILA recommends that the administration consider designating Guatemala for TPS and re-designate both Honduras and El Salvador for TPS. All three countries are experiencing extreme instability and uncontrolled violence, including the highest murder rates in the world, domestic violence and transnational organized criminal violence. These conditions are compounded by the cumulative damage from major earthquakes, hurricanes, floods and other environmental disasters in the countries.

Established by Congress in 1990, Temporary Protected Status (TPS) is humanitarian relief that allows the nationals of a country experiencing emergency conditions to remain temporarily in the U.S. and protects them from deportation. Federal statute authorizes the president to designate TPS in cases when one of the following conditions are present: (1) ongoing armed conflict posing serious threat to personal safety; (2) a foreign state temporarily cannot handle the return of nationals due to environmental disaster; or (3) extraordinary and temporary conditions in a foreign state that prevent aliens from returning. 8 U.S.C. §1254a. TPS may be granted for a period of 6 months to 18 months and can be extended if unsafe conditions in the country persist. DHS can also terminate TPS if conditions improve sufficiently.

A grant of TPS permits eligible country nationals to remain in the U.S. but does not grant permanent legal status or a “green card.” Those granted TPS may apply for work authorization. To qualify, an individual must have been continuously present in the U.S. and have established residence in the U.S. as of specified dates (typically those dates are set on the date the designation is made or shortly before that date). Individuals with significant criminal histories or who pose terrorist or security threats are excluded from TPS.²

El Salvador received TPS first in 1990 by an act of Congress to protect those who had fled the country’s civil war. That designation expired in 1992. In 2001, President Bush granted TPS again following major earthquakes in El Salvador. TPS has been extended ever since for El Salvador by subsequent administrations but will expire on September 2016. Honduras was designated for TPS in 1999, following the devastation of Hurricane Mitch. TPS has been extended continuously for Honduras but will expire on July 2016. Guatemala has never been designated for TPS. In 2010, the Guatemalan government requested TPS, and renewed the request in 2014 since more of its nationals began seeking humanitarian protection in the U.S.

Due to the residency and presence requirements and the TPS application cut-off date, those arriving from El Salvador and Honduras in recent years are not eligible for TPS. The president would need to re-designate TPS for both countries to enable recent arrivals to qualify.

TPS will not provide protection from deportation for those who arrive in the future because they will not meet the residency and presence requirements. Congress included those provisions in the statute partly to address concerns that TPS would encourage future migration from that country.

Humanitarian Parole

The Secretary of DHS should consider granting parole to a defined class of vulnerable Central Americans for “urgent humanitarian reasons” pursuant to 8 U.S.C. §1182(d)(5). Humanitarian parole has been used to provide temporary entry for a wide variety of urgent reasons including for medical treatment, to visit an ill or dying family member, or to serve as a witness at a trial. Those who are in removal proceedings or who have a final order of removal may also be granted parole.³ A grant of parole allows an individual to apply for work authorization. 8 CFR §274a.12(c)(14).

Typically parole is granted to people on an individual basis, but on several occasions parole has been designated for a specified class of individuals (though each case is still reviewed individually). For example, in 2010, DHS announced a humanitarian parole policy to protect orphaned Haitian children.

² A person is not eligible for TPS if he/she (1) has been convicted of any felony or two or more misdemeanors committed in the United States; (2) Found inadmissible under INA § 212(a); (3) Subject to any of the mandatory bars to asylum, e.g., participating in the persecution of another or engaging in terrorist activity .

³ <https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf>

Parole is typically used for individuals residing outside of the U.S. but may also be granted for individuals already present in the U.S., including those who entered without inspection. When applied to persons already living in the U.S., this authority is referred to as “parole in place” (PIP). For example in 2014, DHS re-affirmed its parole policy to help certain family members of enlistees and members of the U.S. military and veterans.

Deferred Enforced Departure (DED)

Deferred Enforced Departure (DED) provides temporary protection from deportation for certain country nationals and is based on the president’s broad constitutional authority over foreign relations. The president may direct that DED be granted to a group of foreign nationals for a specific amount of time. The president may extend DED status and allow beneficiaries to apply for work authorization.

In the past, the executive branch has also used grants of DED to continue to protect nationals of a designated country after that country’s TPS designation has ended. For example, President Bush granted TPS to Liberia in 1991. In 1999, when the TPS designation ended, President Clinton granted DED to individuals whose TPS had expired. Liberia was subsequently redesignated for TPS in September 2002. Again, in 2007, President Bush directed that DED be provided for 18 months. Since then President Obama extended DED for Liberians until September 30, 2016.