

February 18, 2016

The Honorable Jeh Johnson
Secretary of Homeland Security
Washington, D.C. 20528

The Honorable Alejandro Mayorkas
Deputy Secretary of Homeland Security
Washington, D.C. 20528

Via Email and Mail

Dear Secretary Johnson and Deputy Secretary Mayorkas,

We, the undersigned immigrants' rights, faith-based, civil rights, human rights, survivors' rights, and legal service providers, write to provide information regarding critical safeguards and programs that would assist Central American refugees in complying with their immigration court obligations, as requested by Deputy Secretary Mayorkas.

As you know, we remain concerned that Central American refugees who are fleeing violence and persecution in the Northern Triangle are often unable to access legal counsel, setting them up to fail at proving their complex legal cases. The lack of information available to many asylum seekers arriving at our southern border has resulted in: families being released from Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) detention and holding facilities unaware of their legal obligations; asylum seekers including unaccompanied children appearing at their immigration court hearings with no counsel; individuals who are unaware that they are even in removal proceedings; and families who in haste and desperation fall victim to attorneys or unscrupulous notarios who provide ineffective assistance.

Many Central American families and children are fleeing violence that would qualify them for humanitarian protection under U.S. law, and we are concerned that they may be returned to Central America without due process, only to face more violence or even death. As you know, DHS has found that over 85% of the families in detention have a credible fear of persecution, and an investigation by *The Guardian* concluded that at least 83 deportees have been killed upon their return to El Salvador, Guatemala and Honduras since January 2014. The UN High Commissioner for Refugees, the Inter-American Commission of Human Rights, and numerous regional experts have confirmed that these children and families have strong and valid protection claims. We appreciate the Administration's recent announcement regarding the expansion of refugee programs in Central America, but we believe that the legal right to seek asylum is a critical component of any regional approach to protection and we ask you to recognize that legal right in all of your statements and communications regarding Central American refugees.

Further, we ask that you consider the following steps to help ensure that refugees have access to counsel and are able to have their day in court:

- **We support the “Fair Day in Court for Kids” legislation introduced by Senators Reid, Durbin, Murray, Leahy, Menendez, Franken, and Hirono regarding access to counsel** and we urge you to review the provisions of this legislation, many of which can be pursued by DHS and the Department of Justice (DOJ) without new legislation. This bill would require DHS to facilitate access to counsel for everyone in detention including short-term holding facilities near the border. It would also require DHS and EOIR to establish procedures to ensure that legal orientation programs are available to all detained immigrants and procedures to ensure legal orientation programs are commenced for non-detained immigrants in removal proceedings. It would require DHS to create a case management pilot project to increase court appearance rates. The bill would require DOJ to appoint counsel to unaccompanied children, disabled individuals and vulnerable individuals when necessary to ensure fair and efficient adjudications and submit reports to Congress on the number of individuals identified in the Act who were represented by counsel and the number of individuals who received legal orientation presentations. We urge you to implement the provisions within DHS’s authority as soon as possible and support implementation of these provisions by DOJ.
- **We reiterate our request that you stop conducting home raids and arrests on this population.** Like all raids, which we believe are ineffective and dangerous enforcement tactics that often give rise to serious due process concerns, these enforcement actions are generating fear and panic in immigrant communities. These and other raids often involve due process violations such as deceptive practices by ICE that do not respect constitutional safeguards and the failure to provide “bag and baggage” letters notifying individuals of DHS’s intent to deport the individual. The Administration must cease these operations immediately to protect the lives and well-being of Central American migrants. The Administration can ensure compliance with the law using far less aggressive and inhumane measures as these.
- **We urge the Administration to review and revise the screening process for refugees, children and other vulnerable populations arriving at the U.S.-Mexico border.** This is an important undertaking, as there is evidence that many migrants are unable to express a fear of return during expedited removal because they are too traumatized to discuss their fears or because CBP officers fail to ask questions about protection needs or have an inadequate understanding of their role and U.S. protection obligations. CBP officers have referred individual asylum seekers for prosecution further complicating the effort to provide protection and screening.
- **We ask you to stop using fast-track removal procedures, such as expedited removal, against Central Americans.** Since 2014, tens of thousands of families have been placed in expedited removal or reinstatement of removal, despite the high rates at which they qualify for protection. Both of these fast-track processes deprive asylum seekers of their right to due process and results in vulnerable children and their mothers being deported to the very dangers they fled. DHS should place individuals in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act and should establish procedures to place individuals in less adversarial affirmative asylum proceedings.
- **We urge you to stop the use of detention against families.** In past letters, we have opposed the massive use of family detention as an inhumane practice that causes severe harm to mothers and their children. Those that are released are frequently forced to wear

ankle monitors despite demonstrating no significant risk of flight. Detention is unnecessary as nearly all Central American families in detention have relatives or other strong community ties in the United States to whom they could be released during the pendency of their removal proceedings.

- **DHS should create processing centers instead of continuing the failed policy of family detention.** CBP should utilize child welfare professionals to make an initial determination about whether they have a claim to asylum in the U.S., trafficking protection or other humanitarian claims. Children should be screened by child welfare professionals trained in dealing with children who have suffered trauma and then they should be given a notice to appear in immigration court and should be given legal information about how to comply with their obligation to appear in court for their proceedings.
- **Individuals seeking protection at the border must have access to counsel and legal information and be afforded a fair process for seeking asylum.** In addition to the implementation of the access to counsel, legal orientation program and case management program provisions included in Fair Day in Court for Kids legislation, DHS should also ensure that all individuals who have a fear of persecution be able to see an immigration judge through regular removal proceedings. All deportations of Central American migrants should be reviewed prior to the deportation to ensure that individuals had access to counsel and a fair day in court.
- **Support appropriate protections for unaccompanied minors by DHS and the Office of Refugee Resettlement (ORR):** DHS should work collaboratively with ORR to ensure the protection of unaccompanied minors. All temporary shelters must comply with all federal standards and ensure access to legal orientation presentation programs and counsel. ORR should increase post-release services to ensure safe placements.
- **Ensure that due process is afforded to all respondents.** Expedited docketing practices, combined with failures to provide proper notice of proceedings and a lack of representation for the majority of families and UACs in immigration court, have led to a large number of *in absentia* removal orders. EOIR and DHS should establish procedures that ensure that all respondents receive proper notice and that no one is removed who lacked proper notice. Further, by ensuring access to counsel (including appointed counsel in appropriate cases) and a regular removal proceeding before an immigration judge, the Administration will be able to end family detention while supporting the integrity of the entire system, putting in place measures that encourage individuals to comply with our immigration laws and protect our national security.
- **Support Temporary Protected Status, humanitarian parole and other protective programs.** We support new Temporary Protected Status designations of El Salvador, Guatemala, and Honduras because of the rampant violence and persecution of families in the Northern Triangle and encourage the administration to consider additional forms of protection like humanitarian parole.

Thank you for your attention to these critically important requests. We hope that we can work with you to improve due process protections for Central American refugees.

Signed:

Advancement Project
Alianza Americas
Alliance for Citizenship
America's Voice Education Fund
American Civil Liberties Union (ACLU)
American Immigration Lawyers Association (AILA)
Arkansas United Community Coalition
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice – AAJC
Asian Americans Advancing Justice – Los Angeles
Asian Americans Advancing Justice – Asian Law Caucus
Asian Law Alliance
Asian Pacific American Labor Alliance of the AFL-CIO
Asian Pacific Institute on Gender Based Violence
Border Network for Human Rights
CARECEN D.C.
Center for Community Change
Center for Gender & Refugee Studies
Center for Employment Training
Central America Resource Center, Los Angeles
Church World Service
CLINIC – Catholic Legal Immigration Network, Inc.
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
Colorado Immigrant Rights Coalition
Community Health Partnership
Detention Watch Network
Fair Immigration Reform Movement (FIRM)
Farmworker Justice
First Focus
Human Rights First
Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
Immigrant Law Center of Minnesota
Jesuit Conference, National Advocacy Office
Korean American Resource & Cultural Center
Korean Resource Center
Latin America Working Group
Latinos United for a New America
Liberty's Promise
Long Island Wins
Lutheran Immigration and Refugee Service
Massachusetts Immigrant and Refugee Advocacy Coalition
Mi Familia Vota
Montgomery County Education Forum
Mountain View Dreamers
National Immigrant Justice Center
National Immigration Forum

National Immigration Law Center
National Korean American Service and Education Consortium (NAKASEC)
National Latina Institute for Reproductive Health
National Latino Evangelical Coalition
National Partnership for New Americans Asian
Northwest Immigrant Rights Project
OCA – Asian Pacific American Advocates
One America
Refugees and Immigrant Center for Education and Legal Services (RAICES)
San Diego Immigrant Rights Consortium
Service Employees International Union (SEIU)
Service Employees International Union 32BJ
Services, Immigrant Rights, and Education Network (SIREN)
Sin Fronteras
Somos Mayfair, San Diego, California
South Asian Americans Leading Together
Southeast Asian Resource Action Center
Southern Border Communities Coalition
Students Organizing a Multicultural Open Society
Tahirih Justice Center
The Advocates for Human Rights
United We Dream
Voces de la Frontera
Voto Latino
Washington State Coalition Against Domestic Violence
We Belong Together
Women's Refugee Commission