

STATEMENT FOR THE RECORD

On

“Oversight of United States Immigration and Customs Enforcement”

House Judiciary Committee

September 22, 2016

By Lutheran Immigration and Refugee Service

Lutheran Immigration and Refugee Service (LIRS) appreciates the opportunity to submit this statement for the record. LIRS is nationally recognized for its leadership advocating on behalf of refugees, asylum seekers, unaccompanied children, immigrants in detention, families fractured by migration and other vulnerable populations, and for providing services to migrants through over 60 grassroots legal and social service partners across the United States.

Through LIRS’s programmatic work, we have witnessed firsthand the detrimental effects immigration enforcement measures, such as immigration detention and expedited removal have on individuals, families, and communities. LIRS works to ensure that detention and enforcement efforts by the U.S. government are done with compassion and humanity. LIRS firmly believes that any enforcement must include protections against arbitrary detention and safeguards to ensure fair and humane treatment in an economically sound manner.

LIRS has repeatedly called for the limited use of immigration detention and a complete stop to family detention. It is an expensive way for the government to ensure appearance at immigration court proceedings. The use of immigration detention, especially the detention of asylum-seekers and families, has grown consistently and continuously. Fundamental human rights principles restrict the use of detention except as a last resort and only when less restrictive alternatives cannot meet the government’s objectives. The United States’ current practices of immigration detention deviate from those principles given the length and egregious conditions at immigration detention facilities. LIRS urges the government to consider increased use of alternatives to detention.

LIRS is also deeply concerned about the Department of Homeland Security, Immigration and Customs Enforcement (ICE)’s targeting and deporting of unaccompanied children and families who came to the U.S. seeking protection. We remain concerned that families and children targeted for deportation have valid claims to humanitarian protection here in the United States, but are unable to successfully navigate a system that is unfairly stacked against them. Many families and children lack adequate legal representation or adequate notice of a court date.

Finally, LIRS urges ICE to do its part to safeguard an asylum-seeker’s right to access asylum. It is not illegal to exercise the right to seek asylum at a U.S. border or to a U.S. border official; instead, it triggers a process intentionally created to ensure that the United States would uphold its

international and domestic obligations to protect those fleeing persecution or future harm. Rather than rolling back protections that ensure asylum-seeking adults, families, and children are not returned to harm, ICE should work with its counterparts in DHS to take steps to strengthen protection mechanisms and ensure access to justice for these vulnerable populations.

If you have any questions about this statement, please contact Joanne Kelsey, LIRS Acting Director for Advocacy at jkelsey@lirs.org or 202.626.7939.



BOARD OF DIRECTORS

Sara Gould
Chair

The Steinem Initiative,
Smith College

Hiroshi Motomura
Vice Chair

University of California,
Los Angeles School of Law

Inez Gonzalez
Treasurer

California State University,
Fullerton

Ghazal Tajmiri
Secretary

Blank Rome LLP

Julissa Arce

Ascent Educational Fund

J. Anthony Borrego

Spring Street Business Law, PC

Richard Boswell

University of California,
Hastings College
of the Law

Muzaffar Chishti

Migration Policy Institute at New
York University School of Law

Allen Erenbaum

Erenbaum Legal Strategies, Inc.

Robert J. Horsley

Fragomen, Del Rey,
Berssen, & Loewy, LLP

Daniel M. Kowalski

Allott Immigration Law Firm

Cindy Mann

Manatt, Phelps & Phillips, LLP

Robert Pauw

Gibbs Houston Pauw

Alexandra Suh

Koreatown Immigrant
Workers Alliance

*Organizations listed for
identification purposes only*

EXECUTIVE DIRECTOR

Marielena Hincapié

Statement of National Immigration Law Center

House Judiciary Committee

HEARING before the Full Committee:

**“Oversight of United States Immigration and Customs
Enforcement”**

September 22, 2016 at 10:00 AM

Dear Members of the House Judiciary Committee,

The National Immigration Law Center (NILC) is the primary organization in the United States exclusively dedicated to defending and advancing the rights of low-income immigrants. At NILC, we believe that all people who live in the U.S. – regardless of their race, gender, immigration, and/or economic status – should have the opportunity to achieve their full human potential. Over the past thirty-five years, NILC has won landmark legal decisions protecting fundamental human and civil rights and advocated for policies that reinforce our nation’s values of equality and justice for all.

NILC urges the Members of this Committee to use its limited and valuable time to focus on the many ways in which Immigration and Customs Enforcement (ICE) is criminalizing immigrants and communities of color by subjecting them to aggressive enforcement tactics, targeting vulnerable populations – including women and children seeking safe refuge in the U.S. after fleeing some of the most dangerous countries in the Western Hemisphere – failing to ensure basic due process protections and subjecting record numbers of immigrants to detention in dangerous facilities, many of which are run by private contractors motivated solely by profit and without regard for the well-being of those in their custody.

On too many occasions, we have heard this Committee and other Members of Congress use these hearings as an opportunity to denigrate our nation’s foreign-born population of approximately 40

LOS ANGELES (Headquarters)
3435 Wilshire Blvd., Suite 1600
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC
1121 14th Street, NW, Suite 200
Washington, DC 20005
202 216-0261
202 216-0266 fax

www.nilc.org

million people and stoke xenophobic fears by trying to paint the entire immigrant community with one broad brushstroke. At a time when there has been increased focus — by the Department of Justice in particular — on the high fiscal, social and human costs of over-incarceration, one-size fits all punishments, and stigmatizing individuals with labels like “felon” and “convict,” ICE should be examining the many ways in which its policies are entirely out of step with these important national shifts. Rather than spend more time reinforcing dangerous stereotypes about immigrants, we urge this committee to look at how ICE violates its own policies by targeting individuals who are not priorities for removal and failing to exercise sound discretion in cases where someone clearly demonstrates strong equities for why they should remain in the U.S.

More broadly, we urge the committee to look at the enormously valuable social and economic contributions of our nation’s immigrants and to spend its energy and time on humane efforts to reform our dysfunctional immigration system in ways that unite rather than dangerously divide our communities.

ICE’s Aggressive Tactics Violate Its Own Priorities and Endanger Communities

In recent years, massive deportations have torn apart families at a record-high rate of enforcement. Despite reports that have focused on a decrease in the overall number of deportations since the announcement of the November 2014 enforcement priority reforms, federal immigration enforcement funding totals over \$18 billion annually, outspending all other federal criminal law enforcement agencies combined. Conversely, there is far too little funding that has gone to increasing the number of immigration judges or to access to competent counsel for those in removal proceedings — particularly for those in detention who face enormous obstacles in fighting their cases — despite the overwhelming evidence that investing in these areas would result in both huge cost savings to the federal government and the individuals facing deportation as well as more fair case outcomes.

Despite the November 2014 enforcement priorities reforms, which were intended, in part, to reject prior enforcement practices that were inhumane, indiscriminate, and ineffective and resulted in historically high levels of deportations, we continue to see ICE engage in shameful and destructive enforcement tactics that reflect a clear inability to exercise humane and rational discretion. Recent examples of this include raids operations this year

that have targeted Central American mothers and children as well as unaccompanied children fleeing horrific violence in their home countries of El Salvador, Guatemala and Honduras.

To date, ICE has ignored the widespread public outcry from advocates, faith leaders, and Members of Congress over the aggressive and deceptive tactics used to conduct the raids, the treatment of families arrested in the raids (including the detention of mothers and children who pose no flight risk), and the fact that deportation for these families effectively means the administration is sending them back to some of the most dangerous country conditions in the world. The raids impacted far more people than just those ICE arrested and resulted in devastating fear in immigrant communities, particularly in schools. Despite overwhelming criticism that these raids and their consequences are legally and morally wrong and that most of the individuals targeted have strong asylum claims but were not given a meaningful opportunity to present them, DHS continues to defend these shameful tactics.

ICE's Priorities Are Out of Step With National Criminal Justice Reform Efforts

The Department of Justice and the Obama administration have made important strides in attempting to give people who have committed crimes in the past a fair chance at rehabilitation and re-integration into society. The change in attitude and language surrounding formerly incarcerated people contradicts the rhetoric surrounding non-citizens in the exact same position, which is overwhelmingly negative, and aggressively used by some to promote prejudice and false stereotypes of immigrant criminality in order to legislate destructive immigration enforcement policies. Foreign-born individuals should be afforded the same dignity as formerly incarcerated citizens by not labeling them as "criminal aliens" who are the highest priority for removal. Their families and communities suffer in the same way as those of U.S. citizens when someone who has roots in a community is deported. ICE routinely ignores strong and heavily documented equities in cases where an individual may have a past conviction or law enforcement interaction and fails to take into account rehabilitation, ties to community, and other compelling reasons to exercise its discretion by allowing an individual to remain in the U.S.

Furthermore, the prejudicial and negative language used towards immigrants fails to take into account that immigrants are often the *victims* of crimes and exploitation, taken advantage of because of their fear of reporting the harms they experience.

Separating local law enforcement from immigration promotes public safety

Jurisdictions across the country have embraced community trust policies to limit immigration enforcement entanglement because policies that increase the role of state and local police in immigration enforcement – including the 287(g) program, state immigration enforcement laws, the former Secure Communities (discontinued in November 2014 and replaced by the Priorities Enforcement Program, among others – have proven dangerously ineffective and produced substantial public safety costs for participating localities and their communities. For example, a 2013 academic survey found that 70 percent of undocumented immigrants as well as 28 percent of U.S.-born Latinos reported that they would be less likely to contact police officers as a crime victim because they feared the officers would use the interaction to enforce immigration laws.¹

This fear directly undermines public safety, impedes effective criminal law enforcement and diverts limited police resources towards immigration enforcement.² As a result, many jurisdictions embraced community trust policies precisely because they felt that the Secure Communities program had seriously damaged immigrant community trust in police as federal officials asked them to help ensnare individuals and tear apart families and communities. These community trust policies have promoted public safety without insulating anyone from violations of local, state or federal laws, including our immigration laws. They have also not had any negative impact on rates of crimes in the communities that have adopted them.

Many state and local law enforcement leaders have been vocal in opposing their entanglement with immigration authorities for similar reasons. For example, the Major Cities Chiefs Police Association has argued that local immigration enforcement undermines community trust and cooperation and significantly diverts resources from the core mission of police to create safe

¹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

² Clint Bolick, Goldwater Institute, *Mission Unaccomplished: Misplaced Priorities of the Maricopa Sheriff's Department*, Policy Report No. 229, 2 December 2008, 9; Kathy A. White and Lucy Dwight, The Colorado Fiscal Institute, *Misplaced Priorities: SB90 & The Cost to Local Communities*, 1 December 2012, <http://www.coloradofiscal.org/misplaced-priorities-sb90-the-costs-to-local-communities/>; Colorado Fiscal Institute, "The Facts are In: Colorado's "Show Me Your Papers Law" Drains Economy, Threatens Civil Rights," 5 December 2012, <http://www.coloradofiscal.org/the-facts-are-in-colorados-show-me-your-papers-law-drains-economy-threatens-civil-rights/>.

communities.³ Similarly, the President's Task Force on 21st Century Policing recommended in its May 2015 report that, "Whenever possible, state and local law enforcement should not be involved in immigration enforcement."⁴

The Department of Homeland Security (DHS) has also emphasized that it does not support legislative proposals to increase or mandate the role of state and local authorities in immigration enforcement. DHS Secretary Johnson and other DHS officials have acknowledged the enormous failings of the Secure Communities program, which tried to mandate strong state and local immigration enforcement involvement, and recognized the need to eliminate the program.⁵ DHS Secretary Jeh Johnson reiterated this position when he testified before this committee that, "I do not believe that federal legislation mandating the behavior of a lot of sheriffs and police chiefs is the way to go. I believe it will lead to more litigation, more controversy, and it will be counterproductive."⁵

Aggressive immigration enforcement policies are harmful to our economy

Immigrants contribute to our economy in a number of ways, and we cannot afford to continue to tear communities apart and stall meaningful immigration reform. The immigration reform bill passed by the Senate in 2013 (S. 744) would have raised the GDP by more than 5.4 percent over the next 20 years and would have reduced the deficit by \$832 billion. The economic benefits of programs such as Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA, placed on hold due to litigation) are numerous and great, and the Congressional Budget Office and the Joint Committee on Taxation estimated that DAPA and expanded DACA would generate \$18.9 billion in revenues over the 2015-2025 period.⁶ Additionally, comprehensive immigration reform would contribute to other economic benefits, such as increased state and local taxes and Social Security contributions.

³ Chief Thomas Manger, Major Cities Chiefs Association, to Hon. Bob Goodlatte and Hon. Trey Gowdy, 13 March 2015; Major Cities Chiefs, *Immigration Policy*, 2013, https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf; Police Executive Research Forum, *Local Police Perspectives on State Immigration Policies*, July 2014.

⁴ President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, May 2015, 18, http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

⁵ Jeh Johnson, Secretary, Department of Homeland Security, Subject: Security Communities, 20 November 2014, http://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

⁶ Letter from Congressional Budget Office Director Douglas W. Elmendorf to Senator Susan Collins, "Re: Budgetary Effects of S. 534, the Immigration Rule of Law Act of 2015, as introduced on February 23, 2015," (February 26, 2015), <https://www.cbo.gov/sites/default/files/cbofiles/attachments/s534Collins.pdf>.

Congress should focus on humane and just enforcement reforms, not more enforcement-only policies

For too long, Congress has fixated on enforcement-only approaches that permit ICE to tear apart more families. This approach has resulted in peak levels of ICE incarceration of immigrants, fostered harmful stereotypes and misinformation about the immigrant community and obstructed any meaningful attempts at holistic and humane legislative reform to repair a long dysfunctional immigration system that is deeply out of sync with our values as a nation. Moving forward with reactionary and sweeping proposals on one facet of the system does not solve the problem. The real solution to our immigration challenges is broad and humane immigration reforms which would create a workable and earned path to citizenship, allow for all immigrants to fully access, participate in and contribute to their communities, and ensure that all immigrants, regardless of their status or their reasons for facing deportation, are afforded full and fair due process.

STATEMENT FOR THE RECORD OF ELEANOR ACER

Senior Director, Refugee Protection

HUMAN RIGHTS FIRST

On

“Oversight of U.S. Immigration and Customs Enforcement”

**Submitted to the
House Judiciary Committee**

September 22, 2016

Human Rights First Statement for the Record

About Human Rights First

Human Rights First is a non-profit, nonpartisan human rights advocacy and action organization that challenges America to live up to its ideals. For 35 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of asylum seekers and refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at U.S. law firms. Human Rights First also conducts extensive research and reporting on a range of refugee protection issues including U.S. detention of asylum seekers.

Overview

Over the last year Human Rights First has issued several reports on this country's escalating detention of asylum seekers. As detailed in those reports, Human Rights First has found that the United States has sharply increased its detention of asylum seekers and that U.S. detention policies and practices relating to families with children and adult asylum seekers violate U.S. human rights and refugee protection legal obligations. Given this country's global leadership on the protection of refugees, this country's recent—and massive—increase in the use of detention for asylum seekers sets a poor example for other countries.

In particular, Human Rights First has detailed in *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers*, that ICE is failing in many cases to follow its own parole guidance for asylum seekers and is often requiring indigent asylum seekers to pay bonds that are too high for them to afford. Many asylum seekers are now being detained for many months, and sometimes longer, in jails, prisons and immigration detention facilities. Our research, in collaboration with pediatricians and mental health professionals has documented the devastating impact of even short-term detention on children. Two recent reports documented the lengthy detention of asylum seeking families at the Berks County Residential Center in Pennsylvania, and the lack of access to parole, bond, and legal counsel for asylum seekers held at detention facilities in Georgia.¹

Human Rights First's recommendations, some of which are listed at the end of this report, include that DHS and ICE end the detention of families with children, end the over-reliance on detention and expedited removal of asylum seekers, effectively implement the parole directive for asylum seekers, implement a policy and practice of setting bond amounts that are reasonable and affordable, and provide access to immigration court custody hearings through a change in regulations. DHS and ICE should use community-based case management programs in cases

¹ See Human Rights First, *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers* (July 2016), available at <http://www.humanrightsfirst.org/sites/default/files/Lifeline-on-Lockdown.pdf>, Human Rights First, *Long-Term Detention of Mothers and Children in Pennsylvania* (August 2016), available at <http://www.humanrightsfirst.org/sites/default/files/HRF-Long-Term-Detention-Brief.pdf>, and Human Rights First, *Georgia's Detention of Asylum Seekers*, available at <http://www.humanrightsfirst.org/sites/default/files/HRF-Georgias-Detention-of-Asylum-Seekers.pdf>; see also Family Detention: Still Happening, Still Damaging (October 2015), available at <http://www.humanrightsfirst.org/sites/default/files/HRF-family-detention-still-happening.pdf>.

Human Rights First Statement for the Record

where an individualized assessment indicates that individuals need additional support to assure appearance. In addition to providing oversight of ICE policies and practices, Human Rights First recommends that Congress take steps to address the overuse of immigration detention, including the detention of asylum seekers in ways that violate U.S. obligations under the Refugee Convention, its Protocol, and the International Covenant on Civil and Political Rights (ICCPR).

The Growing U.S. Immigration Detention System and Increased Detention of Asylum Seekers

Over the last few years, the Obama Administration has significantly increased its use of immigration detention—both overall and in particular with respect to asylum seekers and families. In recent months, the detained population has reached record highs, remaining near 37,000 to 38,000 and surpassing the 34,000 “bed quota” at which Congress has funded the immigration detention system since 2011.

Private prisons, which have been linked to poor conditions, including substandard medical care, hold 73 percent of detained immigrants, up from 62 percent in 2014. The Department of Homeland Security massively increased its detention of asylum-seeking families in 2014, accounting for at least part of this expansion, with over 3,000 beds erected in just months by private prison facilities in Texas. This growing population of incarcerated adults and children has made U.S. Immigration and Customs Enforcement the biggest federal client of the private prison industry. While profiting the private prison industry, immigration detention costs taxpayers over \$2 billion annually.

Notably, asylum seekers (including adults, families, and children) make up a growing proportion of the detained population of immigrants, despite U.S. refugee protection commitments and international standards, which make clear that asylum seekers generally should not be detained. The number of asylum seekers sent to and held in immigration detention increased nearly threefold from 2010 to 2014. In FY 2010, 15,683 asylum seekers—or 45 percent of all asylum seekers in removal proceedings—were detained. In FY 2014, that number jumped to 44,228, representing 77 percent of all asylum seekers in court proceedings. The all-female detention center in Taylor, Texas held the highest number in FY 2014, detaining 4,142 asylum seekers—more than facilities in 48 states combined. ICE has failed to release more recent statistics, despite provisions in the Haitian Refugee Immigration Fairness Act requiring the agency to provide detailed annual reports to Congress, which may then be made available to the public, on its detention of asylum seekers.

More recently, there appears to have been an even sharper increase in the detention of asylum seekers. For example, as described in a recent Human Rights First report on immigration detention in Georgia, local lawyers who work regularly at the Stewart Detention Center stated that Stewart—the largest immigration detention facility in the country with capacity to hold approximately 2,100 immigrants—has essentially become “a detention center for asylum seekers.” This is particularly troubling given Human Rights First’s findings that lack of counsel, lack of parole, unduly high bonds, and the exceedingly high asylum denial rates at Georgia detention facilities—nearly double the national average—thwart access to asylum. Many asylum seekers detained in Georgia face the unbearable choice of long-term detention or accepting a

Human Rights First Statement for the Record

deportation order to a country where they fear persecution. Reports from around the country have shown similar increases in the detention of asylum seekers in recent months.

ICE Has Failed to Implement Its Own Directive on Parole of Arriving Asylum Seekers

In the first year of the Obama Administration, the Department of Homeland Security (DHS) issued a directive, *Parole of Arriving Aliens Found to Have Credible Fear of Persecution or Torture*, confirming that an asylum seeker should generally be paroled if identity is sufficiently established and if the asylum seeker does not pose a danger to the community or a flight risk which cannot be mitigated. The 2009 Asylum Parole Directive was issued in the wake of numerous reports by entities such as the bipartisan U.S. Commission on International Religious Freedom (USCIRF), international human rights authorities, and groups such as Human Rights First that had documented the often lengthy, inconsistent, unnecessary, and costly detention of asylum seekers in the United States.

Yet, as we near the end of the Obama administration's second term, Human Rights First has found that some ICE field offices and officers fail to follow the Asylum Parole Directive, in many cases leaving asylum seekers who appear to meet all release criteria languishing in detention for months or longer. In some cases, ICE denied parole based on a purported failure to establish identity even when asylum seekers submitted considerable documentation of their identities. In other cases, ICE provided a denial letter with boilerplate language indicating the asylum seeker was viewed as a "flight risk," despite having submitted considerable evidence of community ties and other equities, which, according to the Asylum Parole Directive, should weigh in favor of release on parole.

Under current regulations, "arriving" asylum seekers (those who enter at an official port of entry) are not afforded prompt access to immigration court custody hearings. While immigration judges can review ICE custody decisions for other categories of immigrants in detention, including asylum seekers who enter between ports of entry, they are precluded from reviewing the detention of "arriving aliens." For these "arriving" asylum seekers, ICE effectively acts as both judge and jailer, meaning that when an ICE officer denies parole, that asylum seeker has no other forum in which to contest his or her continued detention. Moreover, asylum seekers and local attorneys reported that ICE often fails to provide a written denial, even though a written decision is required under the parole directive, making it challenging even to contest the decision with the ICE officer who issued it.²

Shifts in parole practices for asylum seekers follow—and appear to be influenced by—two major policy shifts announced by the Obama administration in 2014: a deterrence-based detention policy directed at Central American families seeking asylum in the United States and Secretary Jeh Johnson's November 2014 immigration enforcement priorities memorandum, which characterizes people "apprehended at the border or at ports of entry attempting to unlawfully enter the United States" as top enforcement priorities. In both cases, the administration failed to adequately adhere to—and safeguard through its written policies and public statements—U.S.

² For a full discussion of Human Rights First's findings on release of asylum seekers from immigration detention, see *Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers* (July 2016), <http://www.humanrightsfirst.org/sites/default/files/Lifeline-on-Lockdown.pdf>.

Human Rights First Statement for the Record

legal obligations to those seeking refugee protection. The problem also reflects a systemic failure of the immigration detention bureaucracies to follow parole guidance spelled out only in memoranda, rather than in regulation—a pattern since the early 1990s.

ICE Sets Bonds Higher Than Indigent Asylum Seekers Can Afford, or Sets No Bond

On June 24, 2015, in the context of rising concerns over the detention of asylum seeking families, Secretary of Homeland Security Jeh Johnson acknowledged that bond—which is often used by both ICE and the immigration courts as a condition for release from detention—must be set “at a level that is reasonable and realistic, taking into account ability to pay, while also encompassing risk of flight and public safety.” This statement mirrors the growing recognition in the criminal justice field that bond or bail amounts that do not take into consideration ability to pay, and therefore leave individuals detained solely due to their economic status, are contrary to fundamental principles of fairness and certain constitutional rights.

Despite that statement, it is not clear whether ICE has issued any formal guidance to field offices instructing ICE officers how to assess an individual’s ability to pay—with respect to families in detention or individuals generally. Reports from attorneys serving asylum seekers and other immigrants in detention centers across the country do not indicate that any such policy has been implemented. Indeed, a recent report issued by the U.S. Commission for International Religious Freedom references a statement made by a high-ranking ICE official in an interview for the report, who explained that bond amounts are set according to bed space—when beds are available, bonds are high, when bed space is limited, bonds are low. As a result of such arbitrary practices, many asylum seekers remain in immigration detention for months or longer even after having been otherwise determined eligible for release, simply because their economic situation prevents them from paying the amount deemed necessary to acquire their freedom.

Human Rights First also learned that, in many cases, ICE does not set bond at all. Sometimes this appears to be due to ICE officers “not having time,” as reported by attorneys at local organizations that provide legal assistance to immigrants in detention. In other cases, ICE actively contests release on bond, both by not setting a bond amount initially, and later by contesting release at an immigration court custody hearing. According to recently released data, the failure to set bond appears to be widespread. Syracuse University’s Transactional Records Access Clearinghouse reported that in 94 percent of immigration court custody hearings, ICE had not set any bond amount.

Continuing Detention of Families with Children

Over the past two years, Human Rights First has visited all four family detention facilities—including the former detention facility in Artesia, New Mexico, as well as the existing facilities in Dilley and Karnes, Texas and Berks County, Pennsylvania—to provide legal counsel and/or to conduct research. On June 20, 2014—on World Refugee Day, ironically—when the Department of Homeland Security (DHS) announced plans to significantly increase its capacity to detain parents and children arriving at the southern border, the vast majority of whom were seeking asylum, it did so in order to “deter others from taking the dangerous journey and illegally crossing into the United States.” Since DHS Secretary Jeh Johnson’s 2014 announcement,

Human Rights First Statement for the Record

several federal lawsuits and considerable advocacy have, to some extent, altered the landscape of family detention. For example, in June 2015, Secretary Johnson announced reforms that would aim to shorten the length of stay in family detention centers in recognition of the “sensitive and unique nature of detaining families.” Yet more than one year later, the government continues to send many families into immigration detention centers leaving some mothers and children detained for over a year at the Berks County detention center in Pennsylvania. As detailed in the following section, even short-term detention can have lasting negative health impacts on children. But research has also shown that the negative impacts of detention increase in direct relation to the period of time an individual is held, putting children in prolonged detention at even greater risk of long-term harm to their health and development.

The Harmful Health Impact of Detaining Asylum Seekers, Children, and Families

Numerous studies have documented the short-term and long-term health problems associated with immigration detention, with rates of mental health disorders significantly higher among those who are detained than among those permitted to pursue their immigration cases in the community. Asylum seekers are particularly vulnerable to the negative health consequences of detention due to past experiences of persecution and trauma. In a 2011 study, researchers noted that “[c]onfinement, isolation, lack of freedom, perceptions of being arbitrarily punished, uncertainty about the future, and fear of being returned to situations of danger all converge to create a pattern of deteriorating mental health that does not appear to be evident in community-based alternatives.”

There is also clear evidence that detention—even for relatively short periods of time of less than two weeks—is particularly damaging to the health and wellbeing of detained children and families. Studies show that children in immigration detention can have high rates of psychiatric symptoms, including self-harm, suicidal ideation, depression, developmental regressions, and post-traumatic stress disorder, and may suffer physical health problems, such as weight loss and frequent infections. Dr. Alan Shapiro, a pediatrician and clinical professor at the Albert Einstein College of Medicine at Montefiore Medical Center, says that detention of children and families “leads to isolation, helplessness, hopelessness and serious long-term medical and mental health consequences—even if it lasts for only a few weeks.” While ICE has touted its efforts to transform family detention centers into “humane” settings, research shows that deprivation of liberty is harmful in itself, meaning the only way to avoid the harmful effects of detention on children is to refrain from detention altogether. As stated by the American Academy of Pediatrics in a July 2015 letter to Secretary Johnson, the “act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality making the situation for already vulnerable women and children even worse.”

Immigrants who require medical treatment often receive sub-standard care while detained. Human Rights First recently documented a series of cases in which ICE failed to provide children held with their mothers in long-term detention at the Berks County Residential Center in Pennsylvania with appropriate health and mental health care, including one child who was denied dental care despite having a painful oral infection, and a 9-year old girl (who was later diagnosed with post-traumatic stress disorder by an outside mental health professional) who suffered from nocturnal urinary incontinence, which the facility psychologist attributed to

Human Rights First Statement for the Record

“nothing more than laziness” rather than referring her to a specialist. Adults in ICE detention suffer from inadequate healthcare as well. For example, in December 2015, Human Rights First interviewed a young asylum-seeking woman at the Mesa Verde Detention Facility, which is run by the GEO Group in Bakersfield, California, who suffered from a serious gynecological issue and recounted how she bled profusely from her vagina for ten days before being taken to a hospital, despite her repeated requests for treatment.

Alternatives to Detention

Asylum seekers—like all individuals—have a right to a presumption of liberty and generally should not be placed in detention. Seeking asylum from persecution is a human right enshrined in the Universal Declaration of Human Rights and the United States is obligated under the Refugee Convention and Protocol, as well as U.S. law, to safeguard refugees from return to persecution. Where asylum seekers are initially detained for a limited purpose—such as to verify identity—international standards require that detention be for the shortest time possible, with procedures in place to review custody decisions and to allow for release. According to the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights, detention beyond such a limited time frame would be “arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.” So-called “mandatory detention,” which is triggered by expedited removal proceedings, and other blanket policies such as a “bed quota,” which lead to placement and release decisions that are guided not by an individualized custody determination but rather by the amount of bed space available, are at odds with U.S. commitments under international refugee protection and human rights law, and fail to take into account whether or not detention is actually necessary to ensure an individual’s appearance at immigration hearings and appointments.

Various studies and government data show that the vast majority of immigrants released from detention appear for future court hearings. In fact, FY 2015 data analyzed by Syracuse University’s Transactional Records Access Clearinghouse show that 86 percent of immigrants who had been released from detention as a result of an earlier immigration court custody decision appeared for their final merits hearing. When families were able to obtain counsel, they have complied with their immigration court appearance requirements 98 percent of the time. Moreover, Human Rights First has noted, based on decades of experience providing pro bono representation in asylum matters, that asylum seekers have a strong desire to comply with immigration procedures. Many asylum seekers present themselves to authorities and simply need information related to the process.

Congress and DHS have rights-respecting and fiscally responsible tools available to use instead of detention. For example, an intensive pilot program run by the Lutheran Immigration and Refugee Service last year cost \$50 per day per family. For a six-month program, this equals \$9,100, which is far below the nearly \$125,000 it would cost to detain a two-person family for six months. Moreover, the LIRS program provided significant social support to the families it served, including subsidies for families in need of housing assistance.

Human Rights First Statement for the Record

Unfortunately, DHS and ICE have relied overwhelmingly on the use of intrusive ankle monitoring devices, and appear to automatically require these devices as a condition to release for certain populations or at certain detention centers. The use of electronic ankle monitors should be limited to cases where case management supervision is deemed insufficient to ensure appearance at hearings—based on an assessment of the particular individual’s circumstances.

The Increase in Expedited Removal

A critical component of the U.S. Department of Homeland Security and ICE’s practice of detaining families and asylum seekers is its decision to invoke “expedited removal” under INA §235(b) rather than the regular removal process. Created by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, expedited removal allows immigration enforcement officers—rather than judges—to order the deportation of certain individuals. Given its summary nature and potentially devastating impact, expedited removal was for many years used only at “ports of entry”—airports or official land border entry points. A gradual expansion to areas between ports of entry beginning in 2004 allowed for a vast increase of the use of expedited removal.

Expedited removal, which triggers so-called “mandatory detention,” raises a number of concerns. Such automatic detention flies in the face of U.S. human rights and refugee protection commitments, which recognize that asylum seekers should generally not be detained, that alternative measures must be employed before detention, and that detention must be subject to prompt court review. Instead, asylum seekers are often held for months, and sometimes longer. Many are indigent and unable to secure legal counsel in these facilities, which are generally located far from urban centers. (Nationwide, only 14 percent of detained immigrants secure legal counsel.) Even those who actively request release through parole or bond hearings are often left to languish in detention due to bond amounts they cannot afford or the failure of authorities to follow release policies.

Since 2010, Congress has instructed ICE to maintain nearly 34,000 immigration detention beds--known as the “detention bed quota.” This quota bears a significant cost. DHS’s FY 2017 budget request allocates \$2.2 billion to immigration detention, which equates to roughly \$6 million per day to maintain the immigration detention system in the United States. The average daily cost of detention per person is \$126, though costs vary by facility. That means that it costs roughly \$23,000 to detain an asylum seeker for six months, and \$35,000 to detain an asylum seeker for nine months.

RECOMMENDATIONS

In order to address the growing number of asylum applicants seeking protection in the United States in a rights-respecting and cost-effective manner, Human Rights First recommends that lawmakers:

**REDUCE OVER-RELIANCE ON COSTLY IMMIGRATION DETENTION AND
DETENTION OF ASYLUM SEEKERS**

- Congress must ultimately rescind or limit the flawed expedited removal and “mandatory detention” system that is sending so many asylum seekers and immigrants automatically into immigration detention and wasting limited government resources. Detention should not be the default tool of U.S. migration management, and it certainly should not be automatic for asylum seekers. This flawed approach has caused too many to be sent unnecessarily into immigration detention, and left languishing there for months and sometimes years.
- Congress should urge ICE to abide by its 2009 Directive, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, and implement formal guidance on setting bond that requires ICE officers to take into consideration ability to pay, along with other factors proven to predict risk of absconding.
- Congress should encourage DHS and the Department of Justice to revise regulatory language in provisions located mainly at 8 C.F.R. §1003.19(h)(2)(i) and §212.5, as well as § 208.30 and § 235.3, to provide arriving asylum seekers and other immigrants the opportunity to have their custody reviewed by an immigration court. U.S. detention of arriving asylum seekers, without prompt court review of detention, is a violation of Article 9(4) of the ICCPR. If this change is not made by regulation, Congress should take steps to enact this reform.
- Congress should eliminate the “bed quota” and instead, urge DHS and ICE to abide by release policies and limit the use of detention to cases in which an individualized assessment, subject to prompt court review, determines that other measures will not assure appearance, and request funds for detention beds according to the actual need, as evidenced by data and best practice.
- In reducing detention, Congress should encourage DHS and ICE to reduce reliance on private prisons, similar to the recent announcement of the DOJ Bureau of Prisons, as well as reducing the use of county and local jails.

END THE DETENTION OF FAMILIES

- Congress should urge DHS and ICE to immediately end the detention of families with children and instead, refer families directly for full asylum interviews or into regular removal proceedings, rather than placing families into expedited removal.

**LAUNCH ALTERNATIVE TO DETENTION PROGRAMS AND INCREASE ACCESS
TO COUNSEL**

- Congress should fund community-based alternative to detention programs that utilize case management strategies and do not further restrict the liberty of individuals through electronic monitoring devices.
- Congress should fund legal counsel for vulnerable populations, including asylum seekers and other immigrants held in U.S. immigration detention.

**Human Rights First
Statement for the Record**

- Congress should fund a Legal Orientation Program at the border to inform asylum seekers of their legal rights and obligations, including information about future court hearings and reporting requirements.

PUBLIC STATISTICS ON DETENTION OF IMMIGRANTS AND ASYLUM SEEKERS

- Congress should ensure that ICE abide by its requirement in the Haitian Refugee Immigration Fairness Act to provide an annual report on the detention of asylum seekers and ensure that such reports are provided in a timely manner—for example, within 30 days of the close of the fiscal year.
- Congress should also seek regular, monthly statistics on immigration detention, which include data that illustrate ICE's implementation of policies, such as: 1) parole grants and denials by field office and disaggregated by nationality, gender, and other characteristics; 2) bond amounts set by ICE by field office and disaggregated by nationality, gender, and other characteristics; and 3) total length of stay in detention, measured according to the total number of days spent in detention, with pending cases indicated as such, by field office, and disaggregated by nationality, gender, nature of the legal case, and other characteristics.



*Statement of the Fair Immigration Reform Movement “FIRM”
Submitted to the House Judiciary Committee
Oversight of United States Immigration and Customs Enforcement
HEARING DATE: September 22, 2016
10:00 AM*

We submit this statement for the record on behalf of the Fair Immigration Reform Movement, a national coalition of 44 grassroots organizations from 32 states around the country committed to promoting and preserving the rights of immigrants at the local, state and federal level.

The vast majority of immigrants are hardworking people trying to take care of their families and help their kids succeed. In fact, research shows that immigrants are *less* prone to commit crime than native-born Americans¹ and cities with high concentrations of immigrants show *lower* crime rates.²

For example, in Chicago, New York and Los Angeles, the crime rate has dropped the fastest in neighborhoods with the highest immigrant concentrations.³ Research also shows immigrants bring great benefits to America’s cities and towns by revitalizing struggling local economies.⁴ The arrival of immigrants has helped revive many blighted cities and towns across America.⁵

In recognition of these facts, President Obama has taken steps to prioritize the use of enforcement resources to ensure families are not unnecessarily ripped apart and hardworking, contributing members of the community are allowed to remain in their homes with their loved ones and live and work without fear of deportation. The Department’s use of prosecutorial discretion was intended to be a measured approach that considered a person’s equities like length of time in the U.S. and family and community ties, not only whether they fell under one of the broad enforcement priorities.

¹ See Immigration Policy Center, available at: <http://immigrationpolicy.org/special-reports/criminalization-immigration-united-states>

² See Immigration Policy Center, available at: <http://www.immigrationpolicy.org/just-facts/anecdotes-evidence-setting-record-straight-immigrants-and-crime-0>

³ *Id.*

⁴ The Atlantic, *Immigrants Injecting Life Into the Rust Belt*, (2013); available at: <http://www.theatlantic.com/politics/archive/2013/10/immigrants-injecting-life-into-the-rust-belt/430314/>; Partnership for New American Economy, *Immigration and the Revival of American Cities*, (2013); available at: <http://www.renewoureconomy.org/wp-content/uploads/2013/09/revival-of-american-cities.pdf>.

⁵ *Id.*

However, immigrant advocates have repeatedly raised with U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security concerns that the enforcement priorities have been inconsistently, and, too frequently, unfairly applied. We have urged ICE to align its practices with DHS policy by better evaluating an individual's equities and ties to the community, even in cases where an individual might otherwise fall within the broader enforcement priorities.

FIRM is also deeply concerned about the increased use of family detention and the lack of accountability and meaningful oversight within the detention facilities used to house families. The treatment of the 22 mothers detained at the Berks Family Detention Center in PA who launched a hunger strike on August 8, 2016 underscores our concerns. Each of the mothers has been held in detention between 60 and 365 days as of the beginning of their hunger strike. After launching their hunger strike, the mothers have reported receiving multiple threats from ICE officials, including that they would be transferred to an adult detention center and that their children would be taken away.

Furthermore, the detention of these families is unnecessary as each of the families currently being held at Berks has a family member or sponsor in the U.S. that is willing to host them, and ensure that they are able to get to their court dates for their asylum cases.

We call on Congress and the Administration to take immediate steps to uphold the human rights and due process protections guaranteed to these families under domestic and international law. In particular, we call on ICE Director Saldana to develop stronger oversight and accountability mechanisms to ensure the rights of those in ICE custody are not violated.

Finally, we urge the Administration to end the DHS' use of private, for-profit immigrant detention facilities. While we understand the Administration is conducting a review of the use of privatized immigration detention, FIRM strongly believes that DHS, like the Department of Justice (DOJ), must end its reliance on private prison contractors to detain immigrants. There are far more cost efficient and humane alternatives to detention that have been proven to work.

While it is true the Administration must do more to ensure immigration enforcement is carried out humanely, we need Congress to get to work on passing comprehensive, just and humane immigration reform. FIRM stands ready to work with the Committee to pass legislation that keeps families together and protects the rights and safety of all community members.



**Welcome the stranger.
Protect the refugee.**

**Statement submitted to the Judiciary Committee of the U.S. House of
Representatives**

Hearing: "Oversight of United States Immigration and Customs Enforcement"

September 22, 2016

Throughout our history, America has been defined by our generosity toward those who seek a safe haven from oppression. Welcoming asylum seekers honors our country's history and reflects the deeply-held American and Jewish tradition of offering a chance at a new beginning to those who seek safety and freedom. Once given that opportunity, asylees become active and productive members of American communities.

HIAS, the global Jewish nonprofit is deeply rooted in Jewish and American values. We support policies that promote human rights and fulfill the tradition to "welcome the stranger." As a result, HIAS is deeply committed to preserving the asylum system in the U.S. Asylum seekers must have access to an efficient and humane asylum system.

Both U.S. and international law recognize the right to seek asylum. Under Sec. 208 of the Immigration and Nationality Act, a person may seek asylum in the U.S. regardless of their status. The Refugee Convention also recognizes the right to seek asylum and goes further by prohibiting countries from punishing people that seek asylum. A person who arrives in the U.S. intending to seek asylum, even if he or she is undocumented, should not be treated like a criminal or as an "illegal" immigrant. Despite these well-established principles of law, in practice, asylum seekers are subject to policies that result in detention, sometimes for extended periods of time, and procedures that provide very little due process and protection for applicants.

Immigration and Customs Enforcement (ICE) is deeply involved in the treatment of asylum seekers in the U.S. Unfortunately, ICE perpetuates many of the policies that negatively impact asylum seekers. One of the most problematic is the use of extended detention for asylum seekers.

Asylum seekers should not be detained for periods longer than are necessary to verify the person's identity and to screen out baseless claims. Once these threshold issues are addressed, asylum seekers should be released. This approach is consistent with the laws in place to protect asylum seekers. In 2009

ICE issued a policy that directs ICE to release asylum seekers that have verified their identity and do not pose a danger to the community or a flight risk.

Detention of asylum seekers not only violates the rights of that person but may in fact be harmful. Asylum seekers, who have already suffered trauma, are vulnerable to be re-traumatized in a detention setting. Access to services such as mental health care and legal services is also limited when the person is detained. The inability to seek help may cripple an asylum seeker's ability to present their claim.

In 2014 the increase in asylum seekers from El Salvador, Guatemala, and Honduras caused the Obama Administration to implement policies intended to deter people from coming to the U.S. Increased use of detention, and in particular the detention of families, was part of this strategy. ICE opened two new facilities in Texas specifically for the purpose of housing women and children. Denying parole (in contradiction to the 2009 policy) and bond hearings was also part of this strategy.

Two years later, what was once described as a mixed migration flow, has been recognized by NGOs, the UN Refugee Agency, and the U.S. government as a refugee crisis. Despite the acknowledgement that we are dealing with asylum seekers, ICE continues to detain asylees, including families, and has not addressed growing concerns that bonds, when they are set, are oftentimes so exorbitant that the person cannot pay.

ICE must steps to bring U.S. practice in line with both international and domestic law.

- ICE should immediately end the use of family detention and take steps to reduce the detention of all asylum seekers.
- ICE should expand programs that offer community-based alternatives to detention.
- The 2009 policy on parole should form the basis for new regulations that would ensure more uniform application of parole policies.
- ICE must consider the ability to pay when setting bond amounts.

Seeking asylum in the United States is not a crime. The right to seek asylum without fear of punishment is recognized in both U.S. and international law. Without the ability to seek to safety without fear of repercussions, the asylum system ceases to be a safe alternative for people who can no longer remain in their home country.



STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

SUBMITTED TO THE U.S. HOUSE JUDICIARY COMMITTEE

HEARING ENTITLED "OVERSIGHT OF UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT"

September 16, 2016

Contact:

Royce Bernstein Murray,
Director of Policy
rmurray@immcouncil.org
Phone: 202/507-7510

1331 G Street, NW, Suite 200
Washington, DC 20005
Fax: 202/742-5619

The American Immigration Council (Immigration Council) is a non-profit organization which for over 25 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding Immigration and Customs Enforcement (ICE) and its impact on immigrants and their communities.

We share in the Committee's interest in engaging in oversight of ICE and holding the agency accountable for their enforcement actions and treatment of immigrants in their custody. While the Immigration Council provides research and analysis on a range of related issues, we call to the Committee's attention our concerns about overbroad enforcement actions and detention of asylum seekers and families. The Immigration Council's publications on these critical issues should serve to inform the Committee's assessment of ICE's work in these areas and provide discrete areas in need of a policy or procedural shift.

Overbroad Enforcement:

While we welcomed the Administration's revisiting of enforcement priorities in 2014, the revised priorities remain overbroad, resulting in the placement of immigrants with old or minor criminal convictions into removal proceedings. ICE's Criminal Alien Program (CAP) has become the primary channel through which interior immigration enforcement takes place; between two-thirds and three-quarters of individuals removed from the interior of the United States are removed through CAP. Each year, Congress allocates over \$300 dollars to fund this program.

In its November 2015 Special Report, *Enforcement Overdrive: A Comprehensive Assessment of ICE's Criminal Alien Program* (Attachment A), the Immigration Council reviewed government data and documents obtained through the Freedom of Information Act (FOIA) to examine CAP's evolution, operations, and outcomes between fiscal years 2010 and 2013. The report details how, through CAP's enormous nationwide web, ICE has encountered millions of individuals-U.S. citizens, permanent residents, and other foreign nationals-and removed hundreds of thousands of people. Yet, CAP is not narrowly tailored to focus enforcement efforts on the most serious security or public safety threats—in part because CAP uses criminal

arrest as a proxy for dangerousness and because the agency's own priorities have been drawn more broadly than those threats

As a result, the program removed mainly people with no criminal convictions, and people who have not been convicted of violent crimes or crimes the Federal Bureau of Investigation (FBI) classifies as serious. CAP also has resulted in several anomalies, including that it appears biased against Mexican and Central American nationals. Mexican and Central American nationals are overrepresented in CAP removals compared to the demographic profiles of those populations in the United States. People from Mexico and the Northern Triangle (Guatemala, Honduras, and El Salvador) accounted for 92.5 percent of all CAP removals between FY 2010 and FY 2013, even though, collectively, nationals of said countries account for 48 percent of the noncitizen population in the United States.

In addition, as is explained in the Immigration Council's publication, *The Criminalization of Immigration in the United States* (Attachment B), there is abundant evidence that immigration is not linked to higher crime rates. Empirical data shows that immigration is associated with *lower* crime rates and immigrants are *less likely* than the native-born to be serious criminals. As our report details, high rates of immigration are associated with lower rates of violent crime and property crime. Our analysis of population and FBI data indicates that between 1990 and 2013, the violent crime rate in the United States declined 48 percent. This included falling rates of aggravated assault, robbery, rape, and murder. Likewise, the property crime rate fell 41 percent, including declining rates of motor vehicle theft, larceny/robbery, and burglary.

Despite the evidence that immigration is not linked to higher crime rates and that immigrants are less likely to be criminals than the native-born, many U.S. policymakers succumb to their fears and prejudices about what they imagine immigrants to be. As a result, far too many immigration policies are drafted on the basis of stereotypes rather than hard data. The enforcement apparatus designed to support these laws has grown dramatically in the last three decades; we have spent billions of taxpayer dollars deporting millions of people who have committed only immigration violations. Such enforcement actions focus on quantity, not quality of deportations, while separating families.

There is no doubt that our nation is safer when everyone is accounted for and fully documented. Our communities would benefit from policies designed to update our immigration system, policies that would ensure every person in this country is "on the grid" of U.S. life—with driver's licenses, social security numbers, and other forms of identification. Such a system would help us make smart national security decisions. Working toward such practical policies is a benefit to all Americans and more productive than demonizing an entire group of people for the actions of a few.

The Detention of Asylum Seekers and Families:

Since the summer 2014, record numbers of unaccompanied children and families have been arriving at our Southern Border fleeing unprecedented levels of violence in Central America. Unfortunately, the knee-jerk response to the influx of women and children fleeing violence by the Obama Administration and ICE was to rapidly prop up family detention facilities. Families and others from the region have been apprehended, detained in poor conditions, and rushed through removal proceedings with little due process.¹ As noted in our report, *Detained Deceived and Deported: Experiences of Recently Deported Central American Families* (Attachment C) many have been deported back to the dangerous circumstances from which they originally fled. The Administration's hope was that detaining families would deter others from coming to the United

¹ *Deplorable Medical Treatment at Family Detention Centers*, American Immigration Council, July 20, 2016, available at <https://www.americanimmigrationcouncil.org/news/deplorable-medical-treatment-family-detention-centers>.

States, effectively ignoring the United States' long-held commitment to providing protection to those fleeing persecution.

All this has been done in the name of deterrence and national security when in reality these children and families are deserving of our protection and help. Our report, *A Guide to Children Arriving at the Border: Laws, Policies and Responses* (June 2015) (Attachment D), provides information about the tens of thousands of children—some traveling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border and why the current enforcement only response to their arrival is the wrong approach. The report also seeks to explain the basic protections the law affords them, what happens to the children once they are in U.S. custody, and what the government has done in response.

As described in the *Guide*, unaccompanied children and families are still fleeing Central American violence in large numbers. Organized crime, gangs, and violence are driving children, families, women, and men out of their hometowns and countries, a situation detailed in the report, *Understanding the Central American Refugee Crisis: Why They are Fleeing* (February 2016) (Attachment E), and the paper, *No Childhood Here: Why Central American Children Are Fleeing Their Homes* (July 2014) (Attachment F). Of more than 300 children interviewed in the first five months of 2014 for *No Childhood Here*, 59 percent of Salvadoran boys and 61 percent of Salvadoran girls cited these factors as a reason for their emigration. Moreover, as described in *Understanding the Central American Refugee Crisis*, a survey of Central Americans considering migration concluded that crime and violence have the most powerful impact on someone's decision to migrate and knowing about migration risks had no significant impact on this decision.

Since 2014, El Salvador's murder rate has increased 70 percent, making the small country the murder capital of the Western hemisphere, while Honduras and Guatemala are ranked third and fifth, respectively.² This trend continued during the first quarter of 2016 with El Salvador averaging "nearly one homicide per hour."³ In January 2016 U.S. Peace Corps volunteers withdrew from El Salvador for the first time in 40 years, which followed the September 2012 withdrawal of volunteers from Honduras.⁴ Those fleeing violence face tremendous obstacles along the way, including trafficking, rape, and a fierce enforcement crackdown in Mexico, which only increases the risks they face in seeking protection.⁵

There are signs that the Administration is coming to understand the protection needs of this population, signaled by the recent announcement to expand its Central American Minors (CAM) Refugee/Parole program and commence regional refugee processing by the Department of Homeland Security of individuals from the Northern Triangle in need of resettlement in the U.S. or a third country. Those who cannot safely wait out the lengthy processing and who instead flee to the United States to seek protection should be treated no differently.

² Joshua Paltrow, *Why El Salvador Became the Hemisphere's Murder Capital*, Washington Post, January 5, 2016, available at, <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

³ Dan Harris et al, *In El Salvador, the Murder Capital of the World, Gang Violence Becomes a Way of Life*, ABC News, May 17, 2016, available at, <http://abcnews.go.com/International/el-salvador-murder-capital-world-gang-violence-life/story?id=39177963>.

⁴ Peace Corp, *Peace Corps in El Salvador*, accessed September 21, 2016, available at, <https://www.peacecorps.gov/el-salvador/>; Freddy Cuevas and Adriana Gomez, *Peace Corps Honduras: Why Are All the US Volunteers Leaving?*, Associated Press, January 18, 2012, available at, <http://www.csmonitor.com/World/Latest-News-Wires/2012/0118/Peace-Corps-Honduras-Why-are-all-the-US-volunteers-leaving>.

⁵ Adam Isacson, Maureen Meyer and Hannah Smith, *Increased Enforcement at Mexico's Southern Border*, WOLA Advocacy For Human Rights in the Americas, November 2015, available at, [https://www.wola.org/files/WOLA Increased Enforcement at Mexico's Southern Border Nov2015.pdf](https://www.wola.org/files/WOLA%20Increased%20Enforcement%20at%20Mexico's%20Southern%20Border%20Nov2015.pdf).

Statement for the House Hearing: "Oversight Of United States Immigration Customs Enforcement" | **American Immigration Council** | September 2016

TPS designation for this region is one tool among others to protect those who cannot be safely returned home—and it is long overdue.

* * *

We continue to urge Congress to strengthen protections for vulnerable populations and to work to comprehensively reform our outdated immigration system, in a way that meets our needs and reflects our proud history as a nation of immigrants.