

May 3, 2019

U.S. Department of Homeland Security  
Homeland Security Advisory Council  
CBP Families and Children Care Panel

Dear Members of the CBP Families and Children Care Panel:

As organizations with a deep commitment to and experience in the protection and care of migrant and refugee children we read with great interest the emergency interim report of the Homeland Security Advisory Council's CBP Families and Children Care Panel. Several of our organizations were consulted by the Panel in its preparation of the report, and we appreciated the opportunity to provide our recommendations for improving the care of children in CBP custody. We share the Panel's interest in ensuring the welfare of children and welcome the report's attention to the need for trained professionals and improved capacity to meet the unique needs of children and families. We write today, however, to express our concern about several recommendations in the report that run counter not only to the advice of experts but to the best interests of children. We fear that these proposals, far from protecting children's health and safety, will instead inflict harm and trauma, and lead to the return of children to grave dangers from which they have sought protection.

In advance of your final report, we ask for your consideration of the following concerns to ensure all children are provided safe and appropriate care and a meaningful opportunity to pursue legal protection.

### **Processing and detention of children**

As pediatricians, legal and social service providers, and advocates who have worked closely on these issues for years, we understand the challenges of ensuring the availability of trained professionals and adequate facilities to house and care for children and families along the border, particularly in remote areas. While needed services would ideally be available without the need to transfer facilities and locations, we recognize that this may not be realistic in all locations and that regional processing centers (RPC) may assist in centralizing resources and the delivery of appropriate care. We believe it is imperative, however, that any such centers be carefully designed, staffed, and resourced with input from experts in child welfare to ensure the safety and best interests of children, and that they be used only for initial processing, and not for longer-term detention. We strongly believe that, in both CBP facilities and in any RPC, the processing of and caring for children should be conducted by professionals with child welfare expertise.

We are alarmed by the report's recommendations that Congress roll back the *Flores* settlement to enable the detention of families for longer periods and that new RPCs have sufficient space to "detain all family units apprehended at or near the SWB for a minimum of 20 days."<sup>1</sup> We reject

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<sup>1</sup> See, e.g., Homeland Security Advisory Council, Final Emergency Interim Report CBP Families and Children Care Panel, Apr. 16, 2019, [https://www.dhs.gov/sites/default/files/publications/19\\_0416\\_hsac-emergency-interim-report.pdf](https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf) [hereinafter "HSAC report"], at 10.

the suggestion that such measures are necessary to address “pull factors” driving migration and strongly oppose the use of detention for deterrence purposes—an approach that is both ineffective and harmful to parents and children.<sup>2</sup> In fact, there is no evidence indicating that any time in detention is safe for children. The prevention of trafficking is a similarly inappropriate justification for detaining children and families.<sup>3</sup> In fact, CBP should already be thoroughly screening for risk factors for human trafficking when processing arriving children and families. Child welfare professionals would be well-poised to conduct this screening, given their expertise in working with and interviewing children and teens. When there are specific cases in which trafficking is suspected, CBP has tools at its disposal and within DHS to flag and investigate these, such that detaining all families for longer is neither necessary nor effective. CBP can also inform children and families of ways to report human trafficking, such as the DHS Blue Campaign. We also have concerns about proposed changes to the Trafficking Victims Protection Reauthorization Act (TVPRA), as the report does not clearly define its proposal and, as written, could have unintended consequences that negatively impact children’s well-being.

Detention of children for even brief periods causes known and well-documented developmental, physical, and psychological harm.<sup>4</sup> These impacts may be particularly pronounced for asylum seekers, who have frequently fled severe violence and trauma in their countries of origin. Detention also poses significant barriers to accessing legal counsel to assist families in preparing and presenting their claims for legal protection.

Given such concerns, we urge that families be processed expeditiously and released using community-based alternatives to detention (ATD). Community-based ATDs are an effective way to ensure that families are informed of their immigration rights and responsibilities. For instance, programs such as the Family Case Management Program have proven to be successful in securing the appearance of families at immigration proceedings and check-ins for a fraction of the cost of detention, and should be restored and expanded.<sup>5</sup>

### **Medical care and screening of children**

The report acknowledges that CBP currently lacks the training and capacity to appropriately identify and address the medical needs of children. To this end, the Panel recommends that RPCs be staffed with “sufficient medical staff with physicians specializing in Pediatric or Family medicine, nurse practitioners and physician assistants, licensed social workers, mental health professionals, and dieticians.”<sup>6</sup> The report also recommends the availability of “ancillary contracted medical support” at every port of entry and border patrol station, noting that the placement of a physician at each is “unrealistic.”<sup>7</sup>

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<sup>2</sup> See Linton JM, Griffin M, Shapiro AJ. Detention of Immigrant Children. *Pediatrics*. 2017;139(5).

<sup>3</sup> See HSAC report, at 7 (“The risk for commercial sexual exploitation of these children and teens is predictably high and will be very difficult to prevent after transport or release into the interior U.S.”).

<sup>4</sup> See *Detention of Immigrant Children*, *supra* note 2.

<sup>5</sup> Women’s Refugee Commission, Family Case Management Program, <https://www.womensrefugeecommission.org/rights/resources/1653-family-case-management-program>.

<sup>6</sup> HSAC report, at 11.

<sup>7</sup> *Id.* at 7.

Our organizations strongly support the screening and treatment of children by medical professionals with pediatric training and expertise to ensure timely access to care for sick or injured children. Such conditions may worsen quickly and require immediate attention. The report's suggestion that CBP personnel should be professionally trained to identify illnesses and symptoms such as coughing, fever, and rashes<sup>8</sup> should not be read as a substitute for prompt and comprehensive medical screening and treatment, as needed, by a trained medical professional and oversight of children's care more generally by qualified professionals with child welfare expertise. We urge CBP to work closely with professional medical associations, namely those with expertise in the health care of children and pregnant women, to provide appropriate training for CBP agents. Such training should enable agents to identify signs of sick or injured children so that they can be quickly referred to pediatricians or clinicians trained in pediatrics for care.

The period immediately following apprehension is one of particular vulnerability for children, who have frequently endured harrowing journeys in difficult conditions. It is at precisely this moment that professional medical care may be needed to prevent conditions from rapidly worsening. We are deeply troubled by reports that CBP agents may be taking life-saving or life-sustaining medications from children with underlying medical conditions, such as diabetes and seizure disorder, during processing. This practice could have tragic consequences and is unjustifiable. The recent deaths of two children in CBP custody underscore the inappropriateness of relying on a law enforcement agency alone to oversee and carry out medical care for children. CBP agents cannot and should not be expected to make medical and diagnostic decisions that may have significant consequences for children's health and well-being—a fact the report elsewhere acknowledges.<sup>9</sup> As such, resources must be devoted to ensure that every child is promptly screened by a trained clinician for any medical needs and referred for any additional or emergency care that may be necessary.

### **Access to due process and asylum**

While the report expresses concern about the risks and dangers confronting children during their journey to the U.S., it proposes several legislative and administrative changes that we fear will only increase the vulnerability of children in their search for protection. For example, the report urges emergency action to expedite the asylum cases of families, with a hearing and decision on such claims to conclude within 20 or 30 days.<sup>10</sup> The report further recommends changes to immigration law to limit the availability of asylum to families presenting themselves at ports of entry.<sup>11</sup> Such changes, among others, are intended to enable the prompt repatriation of families, the majority of whom, the report suggests, “would not likely qualify for asylum.”<sup>12</sup> The report presupposes that all asylum claims are invalid, contrary to our due process standards. As such,

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<sup>8</sup> See *id.* at 14.

<sup>9</sup> See, e.g., *id.* at 7 (“An expectation for clinical acumen by CBP agents and officers is highly unrealistic. Even medical personnel need to have a higher level of expertise to anticipate some of the potential infectious disease complications that can be found in this population of children.”)

<sup>10</sup> HSAC report, at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 12 (“Since the majority would not likely qualify for asylum, it would be best if this decision could be made earlier, before they are given NTAs and are released into the interior of the U.S.”).

these recommendations overlook the extreme violence forcing many children and families to flee Central America, and in so doing risk the return of thousands of children to harm, danger, death.

Asylum cases demand that children and families share painful details about experiences giving rise to their fear of persecution. It often takes time for children in particular to develop the trust necessary to discuss past harm and trauma. Detention further hinders the ability of asylum seekers to reveal the basis of their claims for protection and to secure and communicate with counsel who may assist in preparing their cases. Expedited procedures requiring children and families to hurriedly present such claims shortly after harrowing journeys to safety and while detained impede access to justice and threaten the incomplete or inadequate consideration of children's eligibility for protections afforded under both U.S. and international law. Contrary to the report's assertions, the prompt repatriation of asylum seekers will not deter migration. It will, however, gravely endanger the lives of children.

Currently, children and families face numerous hurdles to accessing the U.S. to request protection, from the Administration's "Migrant Protection Protocols" ("Remain in Mexico" policy) to the use of metering and turn-backs of unaccompanied children, who are often told they are unable to join informal waitlists or cannot approach ports of entry without an adult or an attorney.<sup>13</sup> The recommendation that asylum eligibility be restricted to those who can present themselves at ports of entry would eviscerate access to protection for many children and families and would contravene both existing domestic and international law, which provide that asylum seekers should not be punished for their manner of entry.

Restrictions on access to protection are further threatened by the report's recommendation that the U.S. enter a bilateral agreement with Mexico that would foreclose U.S. asylum eligibility for families from Central America. While the report suggests that such policies could change the decision of families to migrate, it is clear that no policy can prevent individuals from fleeing to save their lives. Rather than proposing additional barriers to the full and fair consideration of asylum seekers' requests for protection, our country should instead ensure due process and provide support to meaningfully address the extreme violence, poverty, corruption, and impunity that is forcing children and families from Central America to flee in search of safety.

We urge all stakeholders to remember that immigrant children fleeing violence and seeking asylum in the U.S. are, first and foremost, children. Terminology used throughout the report, such as the "recycling" of children, dehumanizes a vulnerable population. Children deserve our compassion, and language used to describe the threats they face must reflect that.

We appreciate your consideration of our concerns.

Sincerely,

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<sup>13</sup> KIND, The Protection Gauntlet, <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

American Academy of Pediatrics  
Kids in Need of Defense (KIND)  
Lutheran Immigration and Refugee Service (LIRS)  
U.S. Conference of Catholic Bishops/Migration and Refugee Services  
Women's Refugee Commission  
Young Center for Immigrant Children's Rights