

Deporting Children to Danger: ICE is Relying on Sham Proceedings to Send Unaccompanied Children Back to Abusers, Traffickers and Persecutors

In the last week of April, the Department of Homeland Security (DHS) rounded up at least four unaccompanied children who were in the custody of the Office of Refugee Resettlement (ORR) and put them on “ICE flights” to Honduras. This week, DHS announced plans to do the same for children from Guatemala. Each child was previously ordered “removed” in tent court hearings along the border—hearings where they did not have attorneys, and where their parents testified over video without an in-person interpreter. Those hearings were a product of the White House’s prolonged assault on the asylum system. When the tent courts predictably failed their families, the children returned to the U.S. border alone to escape kidnapping, assault, and hunger in the refugee encampments in Mexico. Designated as unaccompanied children, they were placed in protective custody, met with lawyers, were appointed Child Advocates, and began the process of seeking protection. Rather than allowing these child-appropriate procedures to take their course, DHS rushed to implement the “removal orders” imposed in the tent courts. In the first such case, a teenage girl was taken from an ORR shelter in the middle of the night, put on a flight with unknown adults, and returned to the country where she was threatened with death for reporting her father’s sexual abuse.

DHS knowingly returns children to danger by relying on spurious tent court proceedings where children’s right to seek legal protections are subverted. We respectfully urge Congress to demand answers to this practice. Below are further details on the extra-legal policies that lead to this practice, and specific recommendations for action.

"Migrant Protection Protocols" – Following the advice of anti-immigrant senior advisor, Stephen Miller, the Trump administration has put in place a range of extra-legal policies, many of which are being challenged in federal court. Those include the “Migrant Protection Protocols (MPP)”, also known as the Remain in Mexico program, in which the Trump Administration is forcibly returning asylum seekers to Mexico, creating a humanitarian crisis. There have been widespread reports of violence against asylum seekers who are living in makeshift camps or overcrowded shelters with little access to clean water and medical care and where they face an ongoing threat of being kidnapped for ransom.ⁱ Now these people seeking our protection are at great risk of getting ill as they wait for hearings which have been suspended due to COVID-19. Children at greatest risk often flee the camp and return to the U.S. border alone, once again asking for protection.

Tent “courts” – Asylum seekers under MPP are forced to wait for months – but not for a proper day in court. Instead, they must travel back to a U.S. port of entry to a freezing cold tent “court” where they see a video feed of a judge and hear the voice of an interpreter, both of whom are sitting in a comfortable courtroom in another city, even another state. Given the dangerous and remote locations of these tent courts, and the requirement that families arrive in the dark hours of the morning - sometimes as early as 4am - it is nearly impossible for asylum seekers to find counsel. As few as four percent of asylum seekers have been represented in these hearings.ⁱⁱ Many members of Congress have called MPP illegalⁱⁱⁱ and tent courts devoid of due process.^{iv}

The transit ban – The administration’s third-country transit ban bars people from applying for asylum if they transited through another country en route to the United States after July 16, 2019 even if they have well founded fears of persecution.^v It is nearly impossible to seek asylum in Guatemala, Honduras and El Salvador, and Mexico’s system, to the extent it had some capacity to process asylum seekers, has

been completely overwhelmed. Many people coming from the Northern Triangle are seeking asylum in the U.S. because they have family here who can provide a place to live and basic resources to sustain themselves as their cases proceed in court. Congress cannot ignore the historic role the U.S. has played in Central America, including those policies and actions that have separated families and given rise to many of the conditions people seek to escape.^{vi}

Asylum is not children's only option for protection – Even if children are denied asylum in sham tent courts, once they are designated unaccompanied and enter ORR custody, they are eligible for other forms of relief such as T visas, U visas, and Special Immigrant Juvenile Status, among others. Instead of releasing children to sponsors so that they can find a lawyer and present their case, ICE is removing them as quickly as possible, in clear defiance of the language and the spirit of the TVPRA, which was developed to provide more child-appropriate proceedings for children.

Children have the right to appeal immigration decisions – As with adults, any adverse decision of an immigration judge may be appealed administratively to the Board of Immigration Appeals, and then to the circuit court of appeals. Children may also seek reconsideration of the decision made in the tent court hearings, in which their families were ordered removed. In each of the cases of children recently returned to Honduras, attorneys had filed or were preparing to file appeals of the underlying tent court decision. DHS's rush to deport these children, made with knowledge of these appeals, undermines any claim that the children had a "fair day in court."

What Congress can do: The Trump administration has made a mockery of asylum procedures and other legal protections for unaccompanied children. Legal processes which may have been sound in the past, can no longer be considered legitimate. Thus, Congress should:

- Call for an end to ICE removals of unaccompanied children based on removal orders from MPP.
- Reiterate calls to end MPP and restore the right to asylum for people seeking safety.
- Hold DHS and DOJ accountable to their legal obligation to provide unaccompanied children all of the protections granted under the TVPRA and to ensure each child has a fair day in court.
- Ensure that ORR releases children to approved sponsors so they can pursue claims for protection.
- Call for the investigation of those unaccompanied children removed by ICE on the basis of removal orders issued while the children were in MPP.

ⁱ *Lawyer Defending Trump Policy Makes Stunning Admission*, CNN (Mar. 11, 2020), <https://www.cnn.com/videos/politics/2020/03/11/valencia-migrant-kidnapped-awaiting-asylum-hearing-pkg-lead-vpx.cnn/video/playlists/this-week-in-politics/>.

ⁱⁱ *Q&A: Trump Administration's "Remain in Mexico" Program*, HUM. RTS. WATCH (Jan. 29, 2020), <https://www.hrw.org/news/2020/01/29/qa-trump-administrations-remain-mexico-program>.

ⁱⁱⁱ Press Release, *Correa & House Judiciary Democrats Announce Investigation into Trump Administration's "Remain in Mexico" Policy* (Jan. 14, 2020), <https://correa.house.gov/news/press-releases/correa-and-house-judiciary-democrats-announce-investigation-into-trump-administrations-remain-in-mexico-policy>.

^{iv} Letter from Senators Elizabeth Warren, Jeffrey Merkley, and Kamala Harris to Attorney General Barr and Acting Secretary Chad Wolf (March 2, 2020), available at <https://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/senators-raise-concerns-that-dhs-operated-tent>.

^v *Trump Administration's Third Country Transit Bar is an Asylum Ban that Will Return Refugees to Danger*, HUM. RTS. FIRST (Sept. 2020), <https://www.humanrightsfirst.org/sites/default/files/Third-Country-Transit-Ban.pdf>

^{vi} Peter J. Meyer & Maureen Taft-Morales, *Central American Migration: Root Causes and U.S. Policy*, CONGR. RES. SERV. (June 13, 2019), <https://fas.org/sgp/crs/row/IF11151.pdf>.