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To: Sen. Dick Durbin
Sen. Richard Shelby
Sen. Patrick Leahy
Sen. Jon Tester
Rep. Nita Lowey
Rep. Barbara Lee
Rep. Lucille Roybal-Allard
Rep. Henry Cuellar
Rep. Pete Aguilar
Rep. Nancy Pelosi
Rep. Kevin McCarthy
(via email to Chiefs of Staff, Legislative Directors, Budget Staff)

From: Peter Schey, President, Center for Human Rights and Constitutional Law

Re: Negotiating a funding resolution that does not endanger the lives of immigrant children

Dueling bills to end the government shutdown failed in the Senate and you are now engaged in negotiations to fund the government and avoid a second shutdown. The issue of Central American minors was injected into the shutdown discussion by President Trump in a January 4, 2019, letter to Congress, and again in the Senate's *End the Shutdown and Secure Border Act of 2019* ("2019 Secure Border Act"), that received fifty Senate votes.

We are responsible for the treatment of the thousands of immigrant children being detained by the Administration. Pursuant to a nationwide settlement we reached in 1997 in the case now designated *Flores, et al., v. Whitaker, et al.*, No. CV 85-4544 DMG (C.D. Cal), we represent all immigrant children detained each year by CBP, ICE, and ORR. The settlement currently sets the national standards for the care and release of detained children.

For the reasons explained below, a long-term spending bill should prohibit funds being used to (1) forcibly separate children and their parents, (2) terminate the rights children now possess under the *Flores* settlement, and (3) deny asylum to children who possess valid claims under U.S. and binding international laws.

The United States is bound by the terms of the 1967 United Nations Protocol Relating to the Status of Refugees. The Protocol prohibits the deportation of any person, including minors, to countries where they face persecution. The Constitution, Article VI, clause 2, provides, "all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land ..." By denying Central American minors the right to seek and be granted asylum in the United States, the Secure Border Act, if enacted, would clearly violate the supreme law of the land.

Over the past year immigrant children have increasingly become targets of the Administration's anti-immigrant campaign. Thousands of children have been forcibly separated from their parents (many

still not reunited with their mothers and fathers), thousands have been held in cages (the children call them "dog cages"), at least two minors in U.S. custody recently died, and the number of detained unaccompanied minors has skyrocketed to 15,000, because the Administration now unreasonably delays releasing them to parents or relatives living in the U.S. Among other tactics that delay and prevent the release of detained children, *the ORR informs parents and relatives seeking children's release that they will be turned over to ICE for possible arrest and deportation.*

Section 103 of the 2019 Secure Border Act, would make minors from El Salvador, Guatemala, and Honduras, ineligible to apply for asylum in the United States. This is accomplished by amending Section 208(a)(2) of the Immigration and Nationality Act ("INA"), adding language that these Central American minors can only apply for asylum "outside of the United States at a Designated Application Processing Center in Central America." Before applying for asylum with a Designated Application Processing Center, these minors must first apply for asylum with the United Nations High Commissioner for Refugees (UNHCR), or a non-governmental organization designated by the Secretary of Homeland Security (no details are provided about this process), and the UNHCR or the non-governmental must advise DHS that the minor "is likely to be eligible for asylum ..."

Even if a minor's asylum claim is approved by a U.S. Application Processing Center, the minor will still not be admitted to the U.S. if the minor was previously denied asylum (even if new facts warrant a different decision), or if the minor does not have "a qualified parent or guardian [living] in the United States capable of taking custody and care of the minor upon arrival in the United States." Div. L, Sec. 103(a)(2)(F)(i). About sixty percent of unaccompanied minors do not have parents or legal guardians living in the U.S.

Finally, the Secure Border Act requires the immediate deportation of any Central American minor unless the minor is the victim of human trafficking. Div. L, Section 108(D)(i).

Minors fleeing persecution usually flee their countries rapidly. They cannot safely wait for several months or years to process applications while their lives are at risk. Nor do most minors facing persecution have the funds that will be needed for fees the U.S. will impose to "deter frivolous applications." Nor do most minors facing persecution have a "qualified parent or guardian [living] in the United States." These draconian restrictions will encourage minors to attempt entry into the United States without inspection. If successful, these restrictions will result in the abuse, torture, and death of innocent children.

We urge the House and Senate negotiators concerned with the humane treatment of children to insure that the spending bill negotiated in the coming week prohibits funds being used to (1) forcibly separate children from their parents, (2) terminate the Flores settlement, or (3) deny asylum to any child who possesses a valid claim under U.S. law and the United Nations Protocol Relating to the Status of Refugees.

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