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July 2, 2014

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

RE: Concerns with proposed measures for addressing humanitarian crisis
on the border

Via Regular and Electronic Mail

Dear President Obama,

We write to express our serious concern that your proposals for addressing the recent increase in apprehended migrants, particularly unaccompanied minors, at the US-Mexico border, may lead to further serious harm to vulnerable children and families, in violation of international law.

In your recent address on immigration, you correctly described the situation as a “humanitarian crisis.” But we believe some of your proposals risk only worsening the plight of the children and families crossing the border, while doing little to address the underlying causes of the migration.

We offer three main concerns regarding the proposals included in your letter to Congressional leaders dated June 30th:¹

1. A “surge” in detention of families risks harming families

We are deeply disappointed by the administration’s plans to open new detention centers for families, as well as by the ongoing detention of unaccompanied children.

As a general rule, children should never be detained for immigration reasons, as detention can have serious mental health consequences for children, including harm that lasts beyond the period of detention.² This is

¹ The White House, “Letter from the President—Efforts to Address the Humanitarian Situation in the Rio Grande Valley Areas of Our Nation’s Southwest Border,” June 30, 2014, <http://www.whitehouse.gov/the-press-office/2014/06/30/letter-president-efforts-address-humanitarian-situation-rio-grande-valle> (accessed July 1, 2014).

² UN Committee on the Rights of the Child, General Comment No. 6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/GC/2005/6 (2005) <http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2005/6> (accessed July 1, 2014); Alice Farmer, “The impact of immigration detention on children,” *Forced Migration Review*, September 2013, <http://www.fmreview.org/detention/farmer> (accessed July 1, 2014).

true for unaccompanied children and children traveling with adults. This administration closed the Hutto family detention center in response to evidence that the prison-like detention settings were extremely harmful to children.

Expanding family detention is inconsistent with international standards, and particularly the fundamental principle—reflected in both international³ and US law—that “best interest of the child” should govern the state’s actions toward children. We are encouraged to hear the administration is seeking expanded use of the Alternatives to Detention program, but the administration should make expansion of alternatives, rather than detention itself, the focus of its new plans.

If detention of children is used at all, it must only be in rare and exceptional cases, and it must be for the shortest amount of time and in an appropriate setting where the children’s needs can be addressed without causing further trauma or harm. Instead of detention, the Department should either release unaccompanied children to appropriately screened guardians or place them in home-like settings with full access to education, adequate nutrition and sanitation, social interaction, and recreation. The Department should also provide full and fair screenings of unaccompanied migrant children by a designated child welfare specialist skilled in gathering timely and pertinent information in a child-friendly and age-appropriate manner, and ensure that unaccompanied children, particularly asylum seekers, receive the assistance of counsel and a guardian charged with representing their best interests.

2. Increased DHS discretion in processing the return and removal of unaccompanied children from non-contiguous countries is likely to weaken existing due process protections for children and put them at risk of further serious abuse upon return

The President’s letter requests that Congress give the Secretary of Homeland Security “additional authority to exercise discretion in processing the return and removal” of unaccompanied children from Central America. The administration should not seek to expand its expedited removal authority to include children from non-contiguous countries. Current US policies already fall short of international standards requiring careful screening of children for being trafficking victims or refugees. The children are neither systematically appointed court-appointed attorneys nor appointed guardians, both of which are preferred under international standards. Under current practice, armed and uniformed Customs and Border Protection officers carry out initial expedited removal screenings to assess whether adults and Mexican children have protection needs. We have heard reports uniformed

³ UN Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), U.N. Doc. CRC /C/GC/14 (2013), http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf (accessed July 1, 2014). Article 3, paragraph 1, of the Convention on the Rights of the Child gives the child the right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. Moreover, it expresses one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 3, paragraph 1, as one of the four general principles of the Convention for interpreting and implementing all the rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context.

officers routinely interview non-Mexican children about these sensitive topics as well. This is wholly inappropriate for children, who should be interviewed in a friendly and safe atmosphere by qualified professionals trained in age- and gender-sensitive interviewing techniques.

Current US policy particularly falls short with regard to Mexican unaccompanied minors, as they do not receive the full protections of the Trafficking Victims Protection Act accorded to children from non-contiguous countries. Mexican children are currently subject, after the inappropriate assessment for asylum and trafficking claims described above, to the possibility of “expedited removal,” a process which does away with hearings before immigration judges and restricts their ability to make arguments against their removal, as well as their appeal rights. The administration’s plan to strip these protections from other children during this humanitarian crisis is nothing short of troubling. Irrespective of their country of origin, many unaccompanied children are vulnerable to serious abuse and harm upon return to their home countries, including gang violence, domestic child abuse, and recapture by human traffickers.⁴ Reducing due process protections may result in unlawful returns of children who are eligible for protection under US and international law.

3. The administration’s focus on deterrence through increased enforcement may fail to account for family ties

The administration recently requested \$2 billion in increased border resources from Congress, and has expressed that it will be seeking “an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers.” Although we would welcome additional resources to ensure adequate screening and protection of children and adults who are trafficking victims and asylum seekers, we are concerned about a continued misguided focus on deterrence that fails to take into account the strong ties many border crossers have to US families, including US citizens and permanent residents. Many adult “border crossers” are actually long-term residents of the US who seek to enter the US to reunite with US families, after being deported or leaving voluntarily.⁵ As you know, it is nearly impossible for most of those who have already been separated from their families to enter the US legally. People with children, spouses, or other close family members in the US are already undeterred by the risk of death, detention, criminal prosecution, imprisonment in federal prisons, and repeated removals.

We reiterate our recommendation that DHS apply a prosecutorial discretion policy that gives proper weight to family protection across the Department’s agencies, including Customs and Border Protection. Rather than indiscriminately seeking to impose harsh enforcement policies on all migrants, the administration should focus its resources on individuals and organizations that pose a real threat to public safety or national security.

⁴ United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 2014, <http://www.unhcrwashington.org/children/reports> (accessed July 1, 2014).

⁵ Human Rights Watch, *Turning Migrants into Criminals: The Harmful Impact of US Border Prosecutions*, May 2013, <http://www.hrw.org/reports/2013/05/22/turning-migrants-criminals>.

Thank you for your careful consideration. Please direct any questions or responses to Antonio Ginatta, advocacy director in the US Program. We look forward to working with you to create and implement policies that better protect the rights of child migrants within the US immigration system.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenneth Roth', with a stylized, cursive script.

Kenneth Roth
Executive Director
Human Rights Watch

cc: The Honorable Joseph Biden, Vice President of the United States
The Honorable Jeh Johnson, Secretary, Department of Homeland Security