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CGRS Statement for Hearing:

**“The 2014 Humanitarian Crisis at Our Border:
A Review of the Government’s Response to Unaccompanied Minors One Year Later”**

Senate Homeland Security and Governmental Affairs Committee

July 7, 2015

The Center for Gender & Refugee Studies of the University of California Hastings College of the Law (CGRS) applauds the Committee for calling today’s hearing to review the treatment of unaccompanied child migrants in the United States. In particular, CGRS applauds the Committee’s attention to the humanitarian aspect of the recent surge in children coming to our border. Understanding this humanitarian dimension is essential for developing policy solutions that consider the stark reality faced by children in the region, marked by systematic violations of fundamental rights.

For sixteen years, CGRS has been advancing protections for women and children fleeing gender-related and other forms of violence and documenting the root causes of such persecution. It has become clear that short-term “fixes” with a myopic focus on lowering the numbers of individuals who reach our border are fundamentally flawed. Policy reactions such as fast-track deportations and hearing procedures, detention of migrant families¹ as a deterrent, and interdiction of migrants south of the U.S.-Mexico border short-sightedly compromise the rights of refugee children while failing to solve the core regional problems that drive migration. Instead, the United States must seek long-term solutions that address the root causes of migration—including shockingly high levels of violence against children and the social exclusion and marginalization of children.

This statement provides an overview of the findings of our recently published study, *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges*.² Unprecedented in scope, this two-year regional study examines the root causes of child and family migration and its recent spike, as well as conditions and policies in children’s countries of origin, transit countries, and destination countries (including the United States) in the region.³ We conclude with key recommendations for Congress on addressing root causes of migration by filling gaps in protection and guaranteeing rights for migrant children. The findings and recommendations of our study are based on hundreds of interviews with children, parents, and key social and political actors, combined with the experience of experts who work with migrant children.

¹ Although children arriving with parents or legal guardians are not “unaccompanied” per 6 U.S.C. § 279(g), we nonetheless briefly address the needs of these children in our recommendations—as the findings of our study are relevant to both accompanied and unaccompanied children fleeing violence.

² Center for Gender & Refugee Studies and National University of Lanús, eds., *Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges* (February 2015), available at <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights> [hereinafter *Childhood, Migration, and Human Rights*].

³ For purposes of this statement, child(ren) refers to all persons under the age of 18.

Children affected by migration in Central and North America represent an urgent human rights, human development, refugee, and humanitarian challenge.

The challenge to protection of children's fundamental human rights begins in the sending countries of Honduras, El Salvador, Guatemala, and Mexico. In those countries, childhood has become synonymous with witnessing or suffering violence; experiencing human rights violations and discrimination on various grounds; suffering from social exclusion; and being deprived of education, employment opportunities, medical services, and even food. These conditions force children and/or their parents to migrate. The deprivations and violations of their rights continue during transit, especially in Mexico—with governmental actors and criminal syndicates preying on children and families by raping, kidnapping, extorting, or beating them, and with the governmental institutions enforcing migration control policies that are designed to punish and deter migration rather than to protect children.

The challenge to child protection endures in the destination countries of Mexico and the United States, where policies focused on migration enforcement take priority over children's best interests and rights, resulting in children being repatriated to the very conditions they fled. It also persists in Mexico and the United States for migrant children and children in mixed status families who live in the shadows and on the margins of society. Finally, the violation of rights comes full circle in children's countries of origin following their return, because the key root causes that forced them to migrate from Central America and Mexico—violence, social exclusion, poverty, and separation from family—remain unchanged.

Violence as a Driver of Migration of Children in Central and North America

Honduras

Violence and the threat of violence, deprivation of fundamental human rights—in particular the right to develop—and the right to reunite with family members are the three main factors that propel Honduran children to travel north.

Of the 200 children interviewed for *Childhood, Migration, and Human Rights*, 65% stated the main reason they decided to migrate was to escape from violence in their communities, including death threats from criminal groups, the continuous fighting between rival gangs, common crime, and intrafamilial violence.⁴ Statistics demonstrate the direness of the situation. On the extreme end of the spectrum, from 2002 to 2014, nearly 10,000 cases of summary executions and violent deaths of children and youths under the age of 23 were recorded in Honduras.⁵ From January to March of this year, 80 such cases were documented.⁶ Moreover, between 2005 and 2012, the cases of violent deaths of girls and women grew exponentially, from 175 cases in 2005 to 606 in 2012: a 246% increase. In 2012, the violent deaths of girls and young women, ages 0-30, comprised 48% of the 606 recorded cases.⁷

Although Honduras has enacted progressive laws regarding children's rights and protection from harm, in practice the State fails to enforce the laws and to protect against violence. Honduran military officials—with training and support from the United States—have begun stopping children from attempting to emigrate, trapping children in dangerous and harmful situations. Consular officials also fail to secure the

⁴ *Childhood, Migration, and Human Rights* at 84.

⁵ *Childhood, Migration, and Human Rights* at 81.

⁶ Casa Alianza, *Informe Mensual de la Situación de los Derechos de los Niños, Niñas, y Jovenes en Honduras* 2 (March 2015).

⁷ *Childhood, Migration, and Human Rights* at 82-83.

rights of children in transit and destination countries. Moreover, Honduras does not ensure safe repatriation of children, and has no programs in place to enable returned children to remain safely.

El Salvador

Violence and the threat of violence, poverty coupled with deprivation of human rights, and the need to reunify with family members are the leading reasons Salvadoran children leave home.

Violence against children occurs at all levels in El Salvador, including in the home and society at large. A 2014 report revealed that 59% of Salvadoran boys and 61% of Salvadoran girls interviewed identified violence, crime, and threats from gangs as primary push factors of migration.⁸ Indeed, El Salvador has one of the highest murder rates in the world; children as a group comprise more than 90% of all homicide victims.⁹ El Salvador also has one of the highest rates of femicide/feminicide in the world at a rate of 12 murders per 100,000 women in 2011, with 1 in 4 female victims between the ages of birth to 19.¹⁰ Nearly 1,400 children and young people were murdered in 2013 and there were 326 homicides reported in the first two months of 2014 alone.¹¹

Child abuse, as reported by UNICEF and others, is widespread in El Salvador. Seven out of 10 children experience physical abuse at home, including severe physical violence and sexual and psychological abuse.¹² The more than 18,750 cases of violations of the rights of children reported in 2013 represent a 159% increase from 2012 to 2013 of cases of violations of the right to personal integrity, a 78% increase in reported violations of the right to protection from mistreatment, and a 38% increase in reported violations of the right to protection from sexual abuse and exploitation.¹³ Female children are twice as likely to be victims of rape as compared to adult women, and the majority of rapes of girls take place in the home.¹⁴

Despite El Salvador's progressive laws on gender and children's rights, the government does not protect its children, allowing perpetrators to harm them with impunity. The Foreign Ministry recently committed to developing protocols to ensure that consular officials protect and defend the rights of Salvadoran nationals overseas, but there has been little progress. El Salvador further lacks programs to assist returning children to safely and effectively reintegrate into and remain in society. In July 2014, officials from the National Council for Childhood and Adolescence assumed responsibility for interviewing repatriated children, however, the interviews have focused on dissuading children from attempting to migrate again, rather than assessing them for risk to ensure their safety.

Guatemala

The violation of rights in a context of extreme poverty; ethnic, gender, and other types of discrimination; violence and the threat of violence; and family reunification are the central factors causing children to migrate from Guatemala.

Like El Salvador and Honduras, violence occurs against children in the home and in society. The National Council Against Child Abuse in Guatemala completed a study showing that a striking 70% of children in

⁸ *Childhood, Migration, and Human Rights* at 172.

⁹ *Childhood, Migration, and Human Rights* at 161.

¹⁰ *Childhood, Migration, and Human Rights* at 161, 177.

¹¹ *Childhood, Migration, and Human Rights* at 173.

¹² *Childhood, Migration, and Human Rights* at 179.

¹³ *Childhood, Migration, and Human Rights* at 174.

¹⁴ *Childhood, Migration, and Human Rights* at 180.

Guatemala live in situations of violence.¹⁵ Twenty percent (20%) of Guatemalan children interviewed by the United Nations High Commissioner for Refugees (UNHCR) for a recent study, reported that they had suffered or been threatened with serious harm as a result of violence in their society including violence perpetrated by gangs or organized crime (not including violence in the home).¹⁶

Sexual violence against girls and other gender-based violence are ubiquitous in Guatemala. To illustrate, child pregnancies have averaged more than 40,000 per year in Guatemala, with the level reaching as high as 59,000 in 2012. Many of these cases of early pregnancy involve victims under the age of 14.¹⁷ Moreover, in 2013, 198 complaints of femicide/feminicide and 31,836 complaints of other forms of violence against women were reported and impunity for such crimes remained at 93%. More than 5,500 femicides/feminicides were documented in the country between January 2000 and December 2010; this does not include unreported cases.¹⁸

The efforts of the Guatemalan State to guarantee basic social rights, access to justice, and the integrity and capacity of public institutions remain weak and limited. Guatemala also lacks a culturally sensitive approach to indigenous migrant children, increasing their vulnerability. Although some public institutions have procedures and guidelines in place for migrant children, Guatemala still lacks an inter-institutional protocol to guide their different actions, roles, and competencies. Institutions tasked with child protection—with the assistance of other relevant institutions—do not provide comprehensive monitoring of and follow-up on reintegration of migrant children.

Mexico: as a country of origin/sending country

Mexican children migrate to the United States to reunify with family members, to seek the opportunity to develop, and increasingly to escape violence and the threat of violence.

Recent statistics demonstrate that murders of children have spiked dramatically in Mexico. The Special Rapporteur on the Rights of Children and Adolescents of the Inter-American Commission on Human Rights gathered information and documentation from civil society organizations on 2,000 cases of children who were murdered and mutilated between 2006 and 2014.¹⁹ Between the years 2000 and 2009, there was an increase of more than 200 cases per year of children who died by homicide nationally. In Ciudad Juarez, the numbers of children killed increased dramatically from 44 cases in 2000 to 168 cases in 2009.²⁰ Mexico ranks 16th worldwide for homicides against women and girls with rates climbing steadily since 2007. For example, girls between the ages of birth to 19 represent more than 50% of the total victims in Ciudad Juarez—an area known for high rates of murders of women and girls—for which there is data.²¹ Mirroring these findings of increased violence, a study conducted by UNHCR from 2014 found that the percentage of Mexican children who reported migrating for reasons related to violence had tripled from an earlier UNHCR study finding that only 13% of children interviewed named reasons for migration related to violence.²²

¹⁵ ECPAT International, *Informe de Monitoreo de País sobre la Explotación Sexual Comercial de Niños, Niñas y Adolescentes: Guatemala* 17 (2014) [hereinafter ECPAT], http://www.ecpat.net/sites/default/files/CMR_GUATEMALA_FINAL.pdf.

¹⁶ *Childhood, Migration, and Human Rights* at 135-36.

¹⁷ ECPAT at 14.

¹⁸ *Childhood, Migration, and Human Rights* at 136; see also Grupo Guatemalteco de Mujeres (GGM), *Compendio Estadístico 2010-2013, Organismo Judicial* (including updated statistics that show levels of violence have continued unabated), <http://ggm.org.gt/wp-content/uploads/2012/08/Compendio-OJ-2010-a-2013.pdf>.

¹⁹ *Childhood, Migration, and Human Rights* at 295.

²⁰ *Childhood, Migration, and Human Rights* at 296.

²¹ *Childhood, Migration, and Human Rights* at 15, 295.

²² *Childhood, Migration, and Human Rights* at 292.

High levels of impunity and corruption exist, particularly for violence by organized criminal syndicates, but also for intrafamilial violence in Mexico. In addition, Mexico does not guarantee children the right to develop in terms of access to education, skills training, job opportunities, and health care. Until recently, Mexico's consular policies included little attention to migrant children's rights. The National Migration Institute and Mexican consulates have signed numerous bilateral agreements with the United States regarding repatriation of Mexican nationals. The agreements, however, focus on the logistics of return, rather than the protection, welfare, and rights of children. No programs exist to support sustainable reintegration of returned children into communities.

Mexico: as a transit and destination country

Mexico's laws and policies regarding migrants focus on enforcement rather than human rights and protection needs. These laws and policies apply with equal force to children and adults. With training and support from the United States, Mexico has significantly increased its enforcement efforts along its southern border. Increased enforcement, however, has not deterred migration. If anything, amplified enforcement makes children even more vulnerable following repatriation and often leads to remigration.

United States

Migrant children face violations of their fundamental rights at each stage in the migration process in the United States. At the screening stage, U.S. Customs and Border Protection (CBP) fails to fulfill its duty to identify Mexican unaccompanied children with protection needs. CBP's use of expedited removal procedures for adults, also places children traveling with their parents (including from Central America and Mexico) at risk of return to persecution or torture, or to situations harmful to their best interests.

Detention of children, including CBP's temporary detention of migrants (children and families included) apprehended at and near the border, further violates children's rights. Some CBP agents have verbally, physically, or sexually abused children, and the holding facilities deprive children of adequate nutrition, bedding, recreation, and fresh air, and lack basic medical care and psychological services. The practices of the Office of Refugee Resettlement (ORR) for unaccompanied children have been problematic in recent years as there has been a move toward greater institutionalization of children. This context is problematic as facilities used are located far from legal, medical, and mental health services; the release process of children in its custody has been expedited without adequate screening; and post-release services are inadequate. Children held in family detention centers—a regressive practice reinstated in 2014—also face daily violations of their rights.

Deficiencies in the adjudication and consideration of children's cases exist in the U.S. immigration system. For example, inconsistent with decision-making affecting children in other areas of U.S. law, there is no application of the best interests of the child standard for migrant children. In addition, the United States places migrant children in removal proceedings without the right to appointed counsel or access to child advocates (or guardians). Immigration relief options in the United States—which, for the most part, were not specifically designed for children—do not cover all those in need of protection. U.S. migration law does not prioritize family reunification, and avenues for regular immigration status for family members of those residing in the United States fall far short of the need for relief. Further, increased immigration enforcement has led to the detention and deportation of many more parents of U.S. citizen children.

Despite advances in U.S. law intended to ensure the safe repatriation and sustainable reintegration of unaccompanied children, the United States continues to repatriate migrant children without considering the best interests of the child and leading to return of some children back to persecution or death. Major

deficiencies in the U.S. repatriation program include its failure to address root causes of migration and the false belief that deportation deters future migration.

Regional approach

Existing bilateral and regional accords regarding migration in Central and North America fall far short of an adequate response. They lack a binding rights-based approach, or enforcement mechanisms to ensure compliance and do not require substantive protection of children's rights. The accords tend to be logistical in nature; however, even these agreements are not respected, repatriating children in and to risky circumstances. In addition, regional and bilateral security initiatives—including the growing militarization of borders—have exacerbated the vulnerability of migrant children by, for example, strengthening organized criminal networks, making the journey more dangerous, and resulting in detention and deportation of those in need of international protection. Finally, regional and bilateral economic accords contribute directly to the root causes of migration of children by substantially benefiting multi-national companies and the U.S. economy generally, at the expense of the economies and communities in Central America and Mexico.

Recommendations for Congress

1. Do not deny children and other migrants fleeing persecution territorial access to the United States. Congress should ensure that the United States cease training, funding, and encouraging governments of Mexico, Honduras, El Salvador, and/or Guatemala to interdict migrants in order to prevent them from making the journey north to seek protection. Such action risks returning migrant children and families to persecution or torture, contrary to the principle of *non-refoulement*, and forces them to remain in situations of extreme danger—including many women and girls who are victims of gender-based and sexual violence. The United States should urge and support the capacity of Mexico and other countries in the region to screen migrants for vulnerabilities and ensure that those fleeing persecution, torture, or trafficking have access to protection and due process.

2. Do not restrict Trafficking Victims Protection Reauthorization Act (TVPRA) protections for unaccompanied children. Congress must ensure the continuing viability and robust implementation of TVPRA protections for unaccompanied children. These prohibit expedited screening and/or repatriation of unaccompanied children from non-contiguous countries (including Honduras, El Salvador, and Guatemala). Expedited screening risks children's return to persecution, torture, or trafficking. Such risks are heightened for girls, who are frequently victims of gender-based and sexual violence but are often too afraid or ashamed to reveal such information to enforcement agents at the border. With respect to current expedited screening under the TVPRA, which may be applied only to children from Mexico and Canada, Congress should seek to ensure that U.S. agencies implement appropriate child-sensitive procedures and screening by child welfare professionals.

3. Mandate alternatives to detention of children and families. Congress should prohibit the detention of migrant children and migrant families with children. Alternatives to detention have proven effective and are more humane than practices that involve the deprivation of liberty.²³ Congress should outlaw the use of family detention centers for recently-arrived mothers with young children from Central America. Mothers and children should be released and/or placed in alternatives to detention, especially when presenting asylum claims. Any restrictions on liberty should be subject to full due process protections.

²³ Lutheran Immigration and Refugee Service, *Alternatives to Detention Programs, an International Perspective* (May 15, 2009).

4. Mandate appropriate conditions and treatment of migrant children in federal facilities, including oversight mechanisms. Congress should ensure that all agencies adhere to federal standards regarding conditions for children and the treatment of children in immigration custody (per the *Flores v. Reno* settlement), regardless of where children are detained and which agency has formal custody—and should enact these standards into law. Congress should mandate development by ORR, Immigration and Customs Enforcement (ICE),²⁴ and CBP of clear, independent oversight systems to monitor conditions and treatment of children in custody and allow civil society organizations to monitor detention or shelter facilities. In every stage of federal custody, including during initial apprehension by CBP, children should have access to nutritious food, drinking water, restrooms, a blanket and mattress for sleeping, and medical and psychological care as needed.

5. Mandate right to counsel and appointment of child advocates. Congress should mandate the appointment of counsel for all children in removal proceedings who are principal applicants²⁵ on a claim for relief and who lack an attorney. Congress should also mandate that an independent child advocate be appointed for all unaccompanied children.

6. Ensure children are not returned to harm by creating appropriate forms of relief from removal. Congress should enact a form of discretionary “best interests” relief that halts removal proceedings and grants lawful permanent resident status to migrant children ineligible for other forms of relief when repatriation is clearly against their best interests.

7. Ensure that removal proceedings and asylum interviews of children and families are subject to full due process protections and not accelerated. Accelerating cases places unaccompanied children and families at risk of removal to life-threatening situations or situations contrary to their best interests. It poses serious barriers to relief by making it difficult to secure representation (especially *pro bono* representation) in time or to adequately prepare cases. The Executive Office for Immigration Review (EOIR) and U.S. Citizenship and Immigration Services (USCIS) should not expedite unaccompanied children’s or migrant families’ cases or asylum interviews. Many mothers’ and girls’ cases involve gender-based violence, requiring time and effort to prepare due to the sensitivity of the issues involved and reluctance to reveal abuse. Via oversight or legislation, Congress should ensure that these cases are subject to full due process protections and not accelerated.

8. Protect against inappropriate termination of parental rights due to immigration enforcement. Congress should amend federal law to require states to consider on a case-by-case basis a parent’s detention or deportation as a “compelling reason” to delay filing for termination of parental rights unless reunification with the parent would not be in the child’s best interests.

9. Reform immigration policies and the immigration system. Congress should immediately enact immigration system reform that places immigrants in irregular status on a path to citizenship, including parents of U.S. citizen and lawful permanent resident children, and expands visa availability and categories for family unity and for laborers such as domestic workers, nannies, and construction workers. Immigration reform should also create a path to citizenship for DAPA and DACA recipients and should ensure that deported parents of U.S. citizen children, lawful permanent residents, and DACA beneficiaries are allowed to re-enter the United States and apply for immigration relief. This type of comprehensive reform is the only way to provide mixed status families with long-term stability.

²⁴ While DHS detention standards include independent monitoring, greater clarity on the standards is needed.

²⁵ A principal applicant is a child who seeks immigration relief on his or her own, as opposed to as a derivative on his or her parent’s application. Principal child applicants can be unaccompanied or accompanied.

10. Ensure an individualized best interests determination (BID) prior to the repatriation of any unaccompanied child. Congress should require BIDs prior to repatriation of any unaccompanied children and should direct agencies to develop a BID procedure that identifies a child's immediate protection needs, provides durable solutions for these needs, and guarantees the child's rights. In addition, unaccompanied children must be given a chance to seek all forms of relief available to them prior to the initiation of a repatriation process, have access to an attorney to represent them in all types of immigration proceedings, and have a child advocate to advocate for their best interests.

11. Create best practices and sustainable programs for repatriation and reintegration, connected to development and rule of law programs. Via oversight and/or legislation, Congress should ensure that the U.S. Agency for International Development, in conjunction with the Department of State, the Department of Health and Human Services, the Attorney General, international organizations, and NGOs develop and implement best practices and programs in the United States and within the country of return to ensure safe and sustainable repatriation and reintegration of unaccompanied children (whose repatriation is found to be in their best interests). These should be connected to larger development projects that address root causes of migration and enable youth to find alternatives to re-migration, working with local community organizations. Programs should address gender-based violence and gender discrimination in-country and ensure girls' physical safety, education, and job opportunities.

12. Ensure CARSII funds strategic development initiatives that address the root causes of migration, not just military and law enforcement, and require accountability for human rights abuses. The Central America Regional Security Initiative (CARSII) has largely emphasized combating narco-trafficking and gang activity in the region through law enforcement and military backing. CARSII's approach raises significant concerns given the well-documented human rights abuses committed by military and police, lack of transparency in judicial systems, and lack of accountability for human rights abuses. Congress should provide oversight and/or legislation to ensure that CARSII specifically address the root causes of child migration through strategic development initiatives (see #13 below) that promote accountability and respect human rights. This should include funding for reforming the police and ensuring that military and police comply with basic human rights standards. CARSII should also include assistance for judicial independence, transparency, and accountability, including oversight by civil society. Additionally, CARSII should include reintegration support, in collaboration with civil society, to children returning from the United States.

13. Increase U.S. funding for human development plans, employment and educational opportunities, and community-based programs in Honduras, El Salvador, and Guatemala. Congress should approve funds and provide oversight and/or legislation to ensure that critical U.S. aid supports national human development plans, rather than focusing on security measures. The United States should in particular increase funding for teacher training, job training programs and educational opportunities for youth, and programs focused on the development of small businesses. The United States should also increase funding for evidence-based, community violence prevention programs that provide shelter for crime victims and support youth who leave gangs and return to their communities. Finally, the United States should ensure that civil society plays a central role in developing aid initiatives, and make funding transparent and accountable.

14. Build the capacity of under-resourced national child welfare systems in Honduras, El Salvador, and Guatemala. Congress should approve funds and provide oversight and/or legislation to ensure that the United States invests in national child welfare systems in sending countries. Funds should be allocated to build additional shelters (beyond capital cities), increase staff and staff training, and develop enforcement mechanisms to protect at-risk children. Funding should include assistance for children repatriated to their communities. Follow-up and out-of-home care is needed especially for girls, who are at heightened risk of abuse by families.

15. Expand target population of Public Law 109-95, Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005, to include repatriated child migrants. This law mandates that the U.S. government and its partners respond to the needs of at-risk children in the developing world in a comprehensive, coordinated manner. It should include repatriated child migrants.

Thank you for your careful attention to these issues and for the opportunity to share our findings and recommendations. If you have any questions about this statement, please contact Blaine Bookey or Eunice Lee, CGRS Co-Legal Directors by email (bookeybl@uchastings.edu; leeunice@uchastings.edu) or phone (415-565-4877).