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September 5, 2014

Emilio Alvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street N.W.
Washington, D.C. 20006

RE: PRECAUTIONARY MEASURES, NO. MC-317-14
MIGRANT CHILDREN FROM CENTRAL AMERICAN AND MEXICO

Dear Secretary Alvarez Icaza,

We write in response to the August 29, 2014 request from the Inter-American Commission on Human Rights, hereinafter the Commission or the Inter-American Commission, for additional information, on behalf of Petitioners Mary Meg McCarthy, National Immigrant Justice Center, and Oscar Chacon, National Association of Latin American & Caribbean Communities.

In the Commission's response and request, we are asked the following:

- a. Indicate whether the request for precautionary measures is related to a specific set of proposed beneficiaries, In that case, provide further information regarding their current detention conditions, their alleged situation or risk and identity;
- b. Indicate the location where the proposed beneficiaries would be detained, and whether the applicants have contacted them.

**RESPONSE TO THE REQUEST FOR FURTHER INFORMATION REGARDING
BENEFICIARIES**

General background

The Beneficiaries are a specific group of children from El Salvador, Guatemala, Honduras, and Mexico who have been, are, or will be apprehended by United States authorities at or near the U.S.- Mexico border and subjected to expulsion and return to their home countries, without due consideration of their rights to protection to their lives, to security of the person, the rights of children, and the right to asylum, established in articles I, VII, XXVII of the American Declaration of Rights and Duties of Man.

The Inter-American Commission is well informed about the human rights situations in the Beneficiaries' countries of origin. In 2014 and 2013 it has granted precautionary measures to PM 50/14 - Campesino Leaders of Bajo Aguán, Honduras; PM 457/13 - Members of "Asociación para una Vida Mejor de Honduras" [Association for a better life in Honduras] (APUVIMEH); PM 195/13 – Leaders and Human Rights Defenders from the Community of Nueva Esperanza and the Regional Council of the Florida Sector, Honduras; PM 416/13 – Members of the Movimiento Amplio por la Dignidad y la Justicia (MADJ) and their Families, Honduras; PM 409/13 - Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos regarding El Salvador; PM 273/11 - Fray Tomás González Castillo, Ruben Figueroa, staff Home- Shelter migrants 'La 72' and others, Mexico; and PM 391/12 - Toribio Jaime Muñoz Gonzalez and others, Mexico.

Furthermore, during the sessions held in 2014, the Commission has granted thematic hearings on specific issues related to the situation in the above mentioned countries. On March 25, 2014, the Commission devoted almost a complete day to hearings on Guatemala and Honduras, and the morning of March 27, 2014 to Mexico. Petitioners request that the Commission take note of the testimony and evidence presented in its recent 152d Special Session in Mexico on August 2014, where there hearings on the general human rights situation of El Salvador, Honduras and Guatemala, as part of its consideration of this request for Precautionary Measures in order to analyze the risks that Beneficiaries face to their rights to lives, personal security, personal freedom, and to be free from persecution or torture.¹

The proposed Beneficiaries are a specific group of individuals defined as:

- minors, both unaccompanied or traveling with family members, and
- who are citizens of El Salvador, Guatemala, Honduras, and Mexico; and
- who are currently in U.S. custody in detention centers or shelters, or
- who have been in custody [of U.S. immigration officials] and were released, or
- will be apprehended by U.S. authorities upon arriving to the United States in the coming months.

The members of the group are either:

- released into the custody of family members, but have been (or will be) summoned to removal proceedings before immigration judges without appointed attorneys; or
- detained in shelters operated by social services agencies under contract to the U.S. Office of Refugee Resettlement and have been (or will be) summoned to removal proceedings before immigration judges without appointed attorneys; or
- detained in so-called family detention centers operated by the Immigration & Customs Enforcement, including the detention centers at Artesia, New Mexico, and Karnes, Texas, and are subject along with their accompanying parents to "expedited removal" proceedings and whose accompanying parents must pass the so-called "credible fear interview", the first step in the asylum process in the U.S., or be subject to deportation.

The Beneficiaries are a determinable group, a specific set of vulnerable children whose human rights are at risk. All Beneficiaries are subject to accelerated or truncated expulsion proceedings

¹ "IACHR Wraps Up its 152d Special Session," August 15, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2014/086.asp

which deny their most basic rights to due process. They are ALL at risk of being deported, and if deported many risk being killed, assaulted, raped, or tortured upon return to their countries of origin.

As set forth in our letter of August 13, 2014, U.S. law subjects separate classes of children to distinct legal regimes with respect to their detention and procedures to consider their claims against expulsion. Their classification depends on:

- whether they are apprehended while crossing the border unaccompanied or with their parents; and
- whether they are citizens of a Central American country or Mexico.

We will answer the Commission's request for more information with respect to each "sub-group" of children and, to the best of our ability, inform the Commission as to the number of children present in every location for which we have information. The Commission may request that the U.S. government provide information about the location and capacity of detention centers for unaccompanied children and their parents, where that information is not available to the public.

For all Beneficiaries, their "situation of risk" is that they will be deported to countries where they may be subject to persecution and torture at the hands of non-state actors, and in certain cases, corrupt police officials, which endanger their rights to life, security and personal freedom. As set forth in our letter of August 21, 2014 at least five Honduran children deported from the United States were assassinated shortly after their return to Honduras earlier this year. This is a matter of life and death for these individuals.

The Commission can act on a petition for precautionary measures without the names of individual beneficiaries if the group can be sufficiently described, as in the present case.

According to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights, the Commission may adopt Precautionary Measures in response to a request such as the one we submitted. Our request is based on a serious and urgent situation faced by children, who are suffering irreparable harm to their rights to life, security of the person, personal freedom, and their right to asylum, as well as the due process protections necessary to protect such rights.

The Beneficiaries' rights to life, personal security, and personal freedom are threatened by the procedures under which the U.S. authorities detain them and subject them to accelerated removal proceedings without legal representation. The Beneficiary children lack adequate procedures to assess whether they are fleeing persecution in their home countries and are thus refugees, or whether they may seek other forms of relief from deportation according to U.S. immigration law, to protect their life and personal security.

According to Article 25.3 of the Rules of Procedure of the Inter-American Commission on Human Rights, Precautionary Measures may be of a collective nature. Petitioners submit this request on behalf of a group of persons, children who are facing the situation described above.

They are a determinable group of persons by a number of characteristics, namely: nationality (Guatemalan, Honduran, Mexican, and Salvadoran); age (under 18 years of age);

location (in detention centers, shelters, and otherwise under control of U.S. immigration authorities); the immigration procedures that they are facing (accelerated or truncated procedures as explained below); and the period of time in which they entered the U.S. from their countries of origin (in 2014).

Petitioners are not able to determine the exact number of persons that constitute this group or to list their identities, as this is a daily phenomenon in which children are fleeing their countries of origin and while entering the U.S., they are apprehended by U.S. authorities and placed in removal proceedings.

Beneficiary children are not able to seek and obtain legal representation and are facing removal proceedings. Without legal advice, they are unable to understand that they make seek protection from the same authorities who apprehended them, detained them, and have taken them before a judge. Those who are detained with their parents have no possibility of asserting claims in their own right. Petitioners act in the best interests of these children, the Beneficiaries of the Precautionary Measures. Beneficiaries are children who have endured extremely difficult and dangerous conditions travelling from their countries of origin to the U.S. in order to seek protection.

The Beneficiaries will consent to a Precautionary Measure issued on their behalf that will protect their freedom of movement, their right to life and security of the person, ensuring that when they undergo removal proceedings, they will be represented by an attorney who has had sufficient time to discuss the case with them, and if necessary, with guardians *ad litem* to determine the best interest of the child. All of these measures ensure and protect the rights of children and thus the Beneficiaries would consent to them.

The case law of the Commission on Precautionary Measures request was developed by Commissioner Felipe González in his article in *Revista Sur*, Number 13.²

“The jurisprudential evolution regarding precautionary and provisional measures has included the issue of those of a collective nature. Although the case system of the Commission and the Court has experienced significant diversity in the last two decades, and it is no longer focused, almost exclusively, on massive and systematic human rights violations –as it did during periods of predominance of authoritarian regimes in the region–, given that most of the urgent measures granted refer to situations of serious risk to life and integrity of persons, in not few opportunities, they have made reference to situations of a collective nature. As regards precautionary measures issued by the Commission, the recent modifications to its Rules of Procedure expressly refer to those of a collective nature, by the inclusion of a provision that establishes that:

the measures referred to in paragraphs 1 and 2 above [precautionary according to the different grounds] may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.(COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, 2009, art. 25.3).

“Thus, some of the provisional measures issued by the Inter-American Court in the paradigmatic

² Felipe González, Urgent Measures in the Inter-American Human Rights System, 13 *Revista Sur*, available at http://www.surjournal.org/eng/conteudos/getArtigo13.php?artigo=13.artigo_03.htm

cases mentioned in the previous paragraphs, such as that of *Awás Tingni* –among others referring to indigenous peoples– [footnote omitted] and that of *the Girls Yean and Bosico* (case of Haitians and Dominicans of Haitian Origin in the Dominican Republic) precisely refer to situations of a collective nature.

“Urgent measures of a collective nature have also been granted in relation to extreme imprisonment conditions, such as those already mentioned of *Urso Branco Prison* (Brazil), *Uribana Prison* (Venezuela) and *Mendoza Prisons* (Argentina), besides others related to seclusion conditions of children and adolescents (*FEBEM* – Brazil) (CORTE INTERAMERICANA DE DERECHOS HUMANOS, 2005) or of people with mental disability (COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, *Pacientes del Hospital*)³

The Commission also issued precautionary measures in another case similar to the present case. That decision involved the mass expulsions of Haitians from Dominican Republic.⁴ This was a request involving a group of persons who were identifiable under similar criteria as those of this request (nationality, location, immigration procedures they face, etc.)

The present request for Precautionary Measures is also similar in a number of ways to the Haitian Boat People case, in which the Commission issued Merits Report N° 51/96, case 10.675, on March 13, 1997. In that case, under similar parameters, the Commission issued Precautionary Measures, later approving admissibility and merits reports. As that case was pending at the Commission, the group of victims increased, as new Haitians attempted to enter the U.S. – identical to the situation in the instant case. In the Haitian Boat People case, the Commission considered the application of the right to asylum and it stated that:

“155. The Commission will now address the question of the application of the two criteria and will deal first with the criterion of conformity with "international agreements." The relevant international agreement is the Convention Relating to the Status of Refugees 1951 and the 1967 Protocol Relating to the Status of Refugees to which the United States is a party. The Convention establishes certain criteria for the qualification of a person as a "refugee." The Commission believes that international law has developed to a level at which there is recognition of a right of a person seeking refuge to a hearing in order to determine whether that person meets the criteria in the Convention.

“156. An important provision of the 1951 Convention is Article 33(1) which provides that: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."”

Based on the facts of the case, the Commission found violations of rights of victims whose identities were unknown, but that could be identified as members of that group:

³ *Ibid.*

⁴ Precautionary measures granted on November 22, 1999, see <http://www.cidh.org/medidas/1999.eng.htm>

“170. The petitioners also alleged violation of Article I of the American Declaration of the Rights and Duties of Man which refers to the "right to security of the person." Article I provides: "Every human being has the right to life, liberty and the security of his person." This right is defined as "a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation." [43] The petitioners' evidence is compelling and establishes that the security of the persons of both named and unnamed Haitians who were repatriated to Haiti against their will were violated upon their return to Haiti.”

“178. The Commission wishes to point out that a breach of Article II arises not only in the application of a substantive right but also in respect of any unreasonable differentiation in respect of the actual treatment of persons belonging to the same class or category. Thus, the finding that the Haitians have a substantive right to asylum under Article XXVII does not preclude a finding of a breach of Article II in respect of unreasonable differentiation in the treatment of Haitians and nationals of other countries seeking refuge in the United States.”

These principles are similar to those applied in another case, in which the Commission granted Precautionary Measures ordering the U.S. to suspend the deportation of five Haitian nationals from the U.S. until both the U.S. and Haiti established procedures and detention conditions which would be adequate to protect their rights to life, personal security, and to family life. Subsequently an additional forty individuals asked to be included in the guarantees of the Precautionary Measures. The Commission accepted their request.⁵

Sub-groups of Beneficiaries

For each sub-group of Beneficiaries, Petitioners submit information regarding the current detention conditions and their situation of risk with respect to the expulsion proceedings which U.S. law applies to them. Specific individuals in each detention center and stage of expulsion proceedings change on an almost daily basis, as members of the Beneficiaries' class are deported. Therefore, Petitioners will not submit names of specific individuals, as each individual case is likely to become moot. The request for Precautionary Measures is for all the members of the group, not individual relief.

All Beneficiaries' rights to a meaningful opportunity to present their claims are impacted by the fact that there is no right to appointed counsel in immigration hearings, as we have set forth in our prior submissions. Almost no Beneficiaries have the financial resources to hire an attorney; there are simply not enough volunteers available to represent Beneficiaries in accelerated hearings.⁶

⁵ Inter-American Commission on Human Rights, PM 5/11 — Gary Resil, Harry Mocombe, Roland Joseph, Evel Camélien, and Pierre Louis, United States, <http://www.oas.org/en/iachr/docs/annual/2011/TOC.asp>.

⁶ Sonia Nazario, Op-Ed, “Child Migrants Alone in Court, *New York Times*, April 11, 2013, <http://www.nytimes.com/2013/04/11/opinion/give-lawyers-to-immigrant-children.html?pagewanted=all>

The lack of counsel has dire consequences for Beneficiaries. A recent study by the highly respected Transactional Records Access Clearinghouse at Syracuse University concluded that, based on immigration court records, 47% of children represented by counsel obtain refugee status or other forms of humanitarian status. In contrast, only 10% of children without lawyers are successful.⁷ Representation by an attorney multiplies the child's chance of a successful claim for humanitarian status by a factor of almost five. Thus, the lack of due process implicates the Beneficiaries' rights to life, to personal security and freedom, freedom from torture, and freedom from persecution.

Beneficiaries are being moved through the system of detention and court hearings on an accelerated schedule which prevents representation by counsel, deprives them of a meaningful opportunity to present a claim for refugee or other humanitarian status, and thereby imperils their due process rights – and ultimately their lives.

I. The first sub-group of Beneficiaries are unaccompanied children from El Salvador, Guatemala, and Honduras.

Current detention conditions:

This sub-group of Beneficiaries is comprised of unaccompanied children from El Salvador, Guatemala, and Honduras. Under U.S. law, upon apprehension these children are held in detention centers under the jurisdiction of the U.S. Department of Homeland Security and its sub-agencies, Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE), for up to 72 hours. The children have described such facilities as “hieleras” or “refrigerators” where many have been subjected to physical abuse.⁸ These short-term detention centers are in each of the nine Border Patrol sectors along the U.S.-Mexico border between California and South Texas. A recent report by the Office of Inspector General lists forty-one Border Patrol and other “Processing Centers” across five Border Patrol Sectors in Texas.⁹ Public records do not reveal the capacity of each detention center. It is estimated that between October 2013 and June 2014, over 57,000 Beneficiaries passed through these facilities.¹⁰

After a legal limit of 72 hours, responsibility for the Beneficiaries' care and custody is transferred to the Department of Health and Human Services' Office of Refugee Resettlement

⁷ Syracuse University, Transactional Records Access Clearinghouse, “New data on unaccompanied children in immigration court,” <http://trac.syr.edu/immigration/reports/359> July 15, 2014

⁸ In June, 2014, Petitioner National Immigrant Justice Center and four other non-governmental organizations filed a complaint with the Department of Homeland Security regarding abuse and deplorable conditions of the facilities in which unaccompanied children are housed after apprehension.

<http://immigrantjustice.org/sites/immigrantjustice.org/files/FINAL%20DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs%202014%2006%2011.pdf> The U.S. Office of Inspector General issued a mixed report about the conditions in the short-term shelters and the family detention facility at Artesia, New Mexico. Office of Inspector General, Dept. of Homeland Security, “Oversight of Unaccompanied Alien Children,” Aug. 28, 2014, Memorandum for Sec. Jeh Johnson, http://www.oig.dhs.gov/assets/pr/2014/Sig_Mem_Over_Unac_Alien_Child090214.pdf

⁹ Office of Inspector General Report, *Ibid.*, p.4.

¹⁰ Pew Research Center *Fact Tank*, July 22, 2014, at <http://www.pewresearch.org/fact-tank/2014/07/22/children-12-and-under-are-fastest-growing-group-of-unaccompanied-minors-at-u-s-border/>

(ORR) which contracts with social services providers to assist in placing children with family members or housing them in a system of shelters.¹¹

Between January 1, 2014, and July 31, 2014 approximately 37,000 Beneficiaries were released to family members. According to the ORR, the largest concentrations of Beneficiaries in this sub-class are in California, Florida, Maryland, New York, Texas, and Virginia.¹² Although released to family members, they remain subject to the control of immigration authorities, obligated to appear at hearings before immigration courts.

Situation of risk

All of these children remain under the jurisdiction of the immigration authorities and must appear at hearings if summoned. This is true even in the case of toddlers and infants who do not speak.¹³ Unlike the U.S. criminal justice system which has had special courts and procedures for children for over a century, immigration courts make no special provisions to protect vulnerable children, holding them to the same standards of competence to testify, etc. as adults, thus depriving them of the “special protection, care, and aid,” promised in the American Declaration.¹⁴ Beneficiaries’ safety and security is threatened by a system of adjudication that makes no special provisions for children.

Furthermore, the Obama Administration has placed the Beneficiary children’s cases at the top of the list of pending deportation (a/k/a “removal” hearings), a “rocket docket” policy which has been criticized by many immigration judges themselves. Forcing traumatized children (Beneficiaries) to undergo accelerated hearings violates their right to due process.¹⁵ As previously stated, there is no right to appointed counsel in immigration hearings. Many Beneficiaries appear at hearings without counsel and have little chance to win a plea for safety.¹⁶

¹¹ Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(b)(2); Office of Refugee Resettlement, “Unaccompanied Children’s Services,” <http://www.acf.hhs.gov/programs/orr/programs/ucs/about> , May 2014

¹² Office of Refugee Resettlement, “Unaccompanied Children Released to Sponsors by State,” July 31, 2014, <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>

¹³ Rob Garver, “U.S. Immigration Court’s Dirty Secret,” *The Fiscal Times*, July 30, 2014, <http://www.thefiscaltimes.com/Articles/2014/07/30/US-Immigration-Court-s-Dirty-Secret>

¹⁴ Art. 7 “All children have the right to special protection, care, and aid,” American Declaration on the Rights and Duties of Man, Ninth International Conference of American States, May, 1948. Furthermore, the American Convention on Human Rights, while not binding on the United States, guarantees that even minors subject to criminal proceedings (which Beneficiaries are not) are to appear before specialized tribunals and “treated in accordance with their status as minors.” Art. 3.5 Right to Humane Treatment, American Convention on Human Rights, Organization of American States, entered into force July 18, 1978,

¹⁵ “These are not the kinds of cases that can move quickly through the system,” Dana Marks, the president of the National Association of Immigration Judges, told the Guardian. “It’s universally accepted that children and juveniles are a vulnerable population with different needs. In order to be able to communicate with them you need to develop trust and rapport.” quoted in Rory Carroll, “Migrant courts’ quick fix for recently arrived children brings new problems,” *The Guardian*, Aug. 8, 2014, <http://www.theguardian.com/world/2014/aug/08/migrant-courts-quick-fix-recently-arrived-children-new-problems> ; Molly Hennesey-Fiske, “Young immigrants must risk deportation for chance to gain legal status,” *Los Angeles Times*, 8/3/2014, at <http://www.latimes.com/nation/immigration/la-na-immigration-law-20140803-story.html#page=1> Reporting on “fast-track” policy of scheduling Central American children’s hearings within 21 days of their release, ahead of all other pending immigration hearings.

¹⁶ See TRAC study, cited at note 2.

These Beneficiaries are in grave danger from summary, unfair expulsion procedures which would deprive them of their rights to protection as refugees, children, and unaccompanied minors under the American Declaration on the Rights and Duties of Man, the Convention and Protocol Relating to the Status of Refugees and to protection under the Convention Against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment, and other treaties to which the United States is a party, as well as other forms of protection (for victims of trafficking, domestic violence, and for abandoned children) under U.S. law.

II. The second sub-group of Beneficiaries is comprised of children from El Salvador, Guatemala, and Honduras who are apprehended with their parents.

Current detention conditions:

Children from El Salvador, Guatemala, and Honduras who are apprehended in the company of their mothers are held in detention centers with them, often under severely restricted conditions of confinement.¹⁷ In particular, there are two detention centers for mothers and children which were opened in summer 2014 specifically to deal with Beneficiaries and their mothers - in Artesia, New Mexico, and Karnes, Texas. According to Petitioners and other immigrants' rights advocates, conditions in the Artesia and Karnes centers amount to gross violations of the children's rights.

The Artesia center (the Federal Law Enforcement Training Center) was opened as a detention center in June 2014. Over four hours from the nearest cities, it houses approximately 600 mothers and children (including infants) at any one time. According to lawyer sources, approximately 300 individuals (including Beneficiaries) have been deported from Artesia since June, 2014. It was estimated that in late August 2014, there were over 100 Salvadoran children, all Beneficiaries to this request, detained in Artesia.¹⁸ The Artesia center has had numerous problems since it was opened regarding sanitation, access to counsel, medical care, and other fundamental conditions necessary for the dignity of human life. Government attorneys uniformly oppose bail for Artesia detainees, citing a 2003 decision of the Attorney General, based on problems of "mass migration" and "national security."¹⁹ In response The inability to be released on bond creates further pressure on migrants to abandon any claims for asylum or humanitarian relief.

Situation of risk

Mothers detained with their children must pass a "credible fear" interview within days of their arrest in order to be permitted to present a claim for asylum (or any other humanitarian claim) to an immigration judge, and thus suspend the "expedited removal" proceedings. Officials at the Artesia, New Mexico, detention center intentionally threaten, rush, and otherwise discourage the mothers of Beneficiaries from making asylum claims.²⁰ There is no right to appointed counsel in

¹⁷ The U.S. government has no facilities for the detention of fathers and their children, who have been commonly released on bond.

¹⁸ Email correspondence with Susan Gzesh, Sept. 2, 2014.

¹⁹ In re: D-J-, 23 I & N Dec 572 (A.G. 2003), <http://www.justice.gov/eoir/vll/intdec/vol23/3488.pdf>

²⁰ According to the American Civil Liberties Union and other NGOs, "The asylum process at Artesia and its consequence—a dramatic drop in the number of families who are found eligible to apply for asylum—is the direct

credible fear interviews. While volunteer lawyers have traveled at their own expense to Artesia, New Mexico, to provide minimal legal orientation to detained mothers and their children, they are unable to provide representation in proceedings for the vast majority of detained children.²¹ Limited review of negative decisions in credible fear interviews is done by judges stationed in Arlington, Virginia, in telephonic hearings with detained parents of Beneficiaries.

While children can be included in a parent's claim for political asylum or other humanitarian remedies, they may also have a separate right to make claims based on their own circumstances and threats received. There is no provision for separate consideration of asylum or Convention Against Torture claims by children who are detained with their parents.²² The intentional policy to discourage parents from applying for political asylum, and the *de facto* policy of not permitting children detained in Artesia, New Mexico, to assert their own claims for asylum constitute an explicit violation of the child's right to seek asylum with his parents or in his own right, as recognized in the American Declaration and the Convention on the Rights of the Child.²³

Beneficiaries' rights to due process and their rights to assert a claim for political asylum are severely restricted. Beneficiaries are in grave danger of being subjected to summary expulsion procedures which would deprive them of their rights to protection as refugees, children, and unaccompanied minors under the American Declaration on the Rights and Duties of Man, the Convention and Protocol Relating to the Status of Refugees and to protection under the Convention Against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment, and other treaties to which the United States is a party, as well as other forms of protection (for victims of trafficking, domestic violence, and for abandoned children) under U.S. law.

III. The third sub-group of Beneficiaries are Mexican children.

Current detention conditions

The third subclass of Beneficiaries is comprised of thousands of unaccompanied minors who are citizens of Mexico who are currently in custody or will be apprehended by U.S. authorities along

result of policies announced at the highest levels of our government." See; Complaint, *M.S.P.C., et al. v. Jeh Johnson, et al.* filed 8/22/14, No. 114-cv-01437, U.S. District Court for the District of Columbia, https://www.aclu.org/sites/default/files/assets/filed_complaint_1.pdf

²¹ According to Laura Lichter, former national president of the American Immigration Lawyers Association, ICE officials greatly restrict attorney access to detainees in Artesia. See: <http://www.vox.com/2014/8/6/5971003/artesia-immigrants-detention-due-process-families-lawyers-asylum-court-border>

²² Meghan Jordi, "Children in Jail: What It's Like for Immigrants Held at Artesia Center" American Immigrant Council, *Immigration Impact*, at: <http://immigrationimpact.com/2014/08/06/children-in-jail-what-its-like-for-immigrants-held-at-artesia-center/#sthash.ebdDdNFF.dpuf> On July 18, 2014 the U.S. deported three groups of mothers and children detained in the Artesia, New Mexico, detention center to their countries of origin: to Honduras, thirty minor children, six months to fifteen years old, and twenty six mothers; to Guatemala, seven minor children ages two to sixteen years and five mothers; and to El Salvador, four minor children, ages four to fourteen years and four mothers. Gabriel Stargardter, "U.S. steps up deportation of Central American child migrants," *Reuters*, 7/18/2014, at <http://www.reuters.com/article/2014/07/19/us-usa-immigration-flights-idUSKBN0FN2L120140719>

²³ Art. 7 "All children have the right to special protection, care, and aid," American Declaration on the Rights and Duties of Man, Ninth International Conference of American States, May, 1948. Art. 22, Convention on the Rights of the Child, entered into force Sept. 2, 1990, recognizing children's rights to apply for asylum.

the U.S.-Mexico border in the coming months.²⁴ Unaccompanied Mexican children are specifically exempted from the special procedures accorded to children from “non-contiguous countries” under the 2008 Torture Victims Protection Reauthorization Act and regulations. The vast majority of apprehended Mexican children are interviewed by Border Patrol agents in detention facilities as to whether they have a “credible fear” of return to Mexico.

In a report based on a two year study of conditions for Mexican children seeking safe haven in the U.S. the NGO Appleseed concluded that facilities were not appropriate places to interview children. Nor were CBP officials, who are primarily dedicated to arresting unauthorized entrants, properly trained to interview children about sensitive subjects.²⁵ As a result almost all Mexican children are immediately returned to Mexico with no meaningful opportunity to seek protection. However, according to the Appleseed study, the Department of Human Services keeps no statistics on the numbers of Mexican children subjected to these procedures:

DHS does not publish data concerning how many Mexican UACs it apprehends each year, how many of the apprehended minors have crossed the border and been detained before, how many are screened pursuant to the TVPRA, how many are repatriated, how many are transferred to the custody of HHS (that is, to ORR/DUCS shelters) or the reasons for such transfers.²⁶

It may be possible for the Commission to ascertain whether in the three years since the publication of the Appleseed study, DHS has begun to keep statistics. What Appleseed was able to find were statistics from the CBP (Customs and Border Patrol) that set the number of unaccompanied Mexican children returned to Mexico in Fiscal Years 2009 and 2010 to be approximately 15,000 per year.²⁷

Situation of risk

Unaccompanied Mexican children are subjected to non-reviewable summary proceedings, in which the participation of counsel is not permitted, to determine their need for protection (so-called “credible fear” interviews).²⁸ Almost all unaccompanied Mexican children are returned immediately to Mexico.²⁹ They are in grave danger of being subjected to summary expulsion procedures which would deprive them of their rights to protection as refugees, children, and unaccompanied minors under the American Declaration on the Rights and Duties of Man, the Convention and Protocol Relating to the Status of Refugees and to protection under the

²⁴ Appleseed, *Children on the Border*, “Executive Summary,” 2011, <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>

²⁵ In the 2008 Trafficking Victims Protection Act, children from “contiguous countries” (Mexico and Canada) are subjected to a brief interview and returned directly to Mexico if they have not convinced a Border Patrol officer that they have a “credible fear” of return. 8 U.S.C. § 1232(a)(2)(A). and *See*: Appleseed, *Children on the Border*, “Executive Summary,” 2011, <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>

²⁶ *Ibid*, at p. 9

²⁷ *Ibid*, at p. 17

²⁸ *Ibid*

²⁹ *Ibid*, *Appendix 1*, “nearly all of these children [15,000 Mexican unaccompanied minors detained in FY 2009] were repatriated to Mexico.”

Convention Against Torture and other Cruel, Inhuman, and Degrading Treatment or Punishment, and other treaties to which the United States is a party, as well as other forms of protection (for victims of trafficking, domestic violence, and for abandoned children) under U.S. law.

CONCLUSION

The Beneficiaries are in danger of being sent back to their countries of origin, where the security of their persons and their lives are at severe risk. Their situation is serious and urgent. An order from the Inter-American Commission on Human Rights to the United States in the form of precautionary measures – to refrain from deporting Beneficiaries until their right to remain in the U.S. has been given meaningful consideration, including the right to counsel - will prevent irreparable harm to the Beneficiaries.

While the United States has not ratified the Convention on the Rights of the Child, every other member State of the Organization of American States has done so. The CRC has been so widely ratified that its provisions have been held to be *ius cogens* by at least some U.S. courts and to provide an almost universal standard for the treatment of children fleeing danger. The Convention recognizes that

“a child who is seeking refugee status... shall, whether unaccompanied or accompanied by his parents, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are parties.”³⁰

The spirit of the CRC should guide this Commission’s adjudication of this request for Precautionary Measures.

For all the above reasons, Petitioners urgently request the Inter-American Commission for Human Rights to issue Precautionary Measures which are needed to protect the lives and security of the Beneficiaries, vulnerable children who have been, are or will be apprehended by United States authorities at or near the U.S. Mexico border. Petitioners request that the Inter-American Commission order the United States to cease the expulsion and return to their home countries of Beneficiaries without due consideration of their rights to protection and their right to asylum.

Respectfully submitted,

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³⁰ Art. 22, Convention on the Rights of the Child, entered into force Sept. 2, 1990.

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