

Women and Children Seeking Protection Are Not “Loopholes”

Funding the government must not come at the expense of attacks on refugees seeking protection

The Trump administration, in a continuation of its ongoing attacks on children and families seeking protection, is now [calling](#) for [measures](#) that would expand a reckless detention system and decimate longstanding legal processes for children, families, and others to seek protection in the United States. Children and adults escaping violence are neither exploiting U.S. laws nor do they pose a threat to border security. Instead, they fled to find safety and fairness in a legal process the administration has sought to end or curtail at every turn. The Women’s Refugee Commission (WRC) is deeply concerned by and opposed to any proposals that include:

1. Eliminating crucial protections for unaccompanied children (UC)

U.S. law has recognized that children arriving at the border in need of safety should get additional safeguards to ensure that the United States does not return them to a situation that could harm them. Gutting those protections in the name of border security does not make the United States safer, nor our borders more secure. **Yet the administration is again demanding that children receive only a cursory screening at the border, which risks returning children to harm.**

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) filled a crucial legislative gap in U.S. anti-human trafficking efforts. Prior to the TVPRA, migrant children were not being screened by the Department of Homeland Security (DHS) to determine if they were survivors or at risk of trafficking. Many unaccompanied children were summarily returned to Mexico without anyone confirming their nationality or even asking if a return would be safe, meaning children were returned to dangerous smugglers and traffickers waiting on the Mexican side of the border. The TVPRA fixed this problem by requiring that DHS at least minimally screen unaccompanied children for trafficking concerns and it reaffirms requirements in the Homeland Security Act of 2002 that unaccompanied children from non-contiguous countries and any children at risk of trafficking be transferred within 72 hours to the custody of the Department of Health and Human Services (HHS) where they can be appropriately processed and screened.

2. Expanding Immigration & Customs Enforcement (ICE) and other detention

The United States already spends **more than \$4 billion each year for detention, enforcement, and removal**. The agency now holds in detention more than an unprecedented 44,600 immigrants each day, despite being [funded only for 40,520](#). The administration now demands funding for 52,000 ICE detention beds, a more than 50 percent increase over detention levels just three years ago. WRC has [extensively documented](#) the growth in and [mistreatment](#) in ICE detention of women and children, including refugees seeking asylum. Once detained, many are either offered an impossibly high bond or denied bond, parole, or release into an alternative to detention program entirely. This is **despite incredibly effective [community-based alternatives to detention](#) that [cost a fraction](#) of detention and have received bipartisan support from [appropriators](#) and [voters](#)**. The administration’s demands would expand a costly detention system that is motivated by profit and politics, not public safety or smart practices.

The administration’s proposal also requires \$800 million to “address urgent humanitarian needs,” including “additional temporary facilities for processing and short-term custody.” While couched in the language of humanitarian assistance, funding in this area would undoubtedly be used to expand Customs and Border Protection (CBP) and ICE detention capacity, whether the inappropriate border facilities that CBP itself concedes are ill-suited to hold vulnerable populations, the tent cities the president recently threatened to open, or expanded ICE jails. Likely none of these efforts would be humanitarian in nature, but all risk permanent expansion of a system already designed to deter refugee children, families, and others from seeking asylum.

3. (Illegally) trading one set of protections for another

The administration has also floated the possibility of reviving the Central American Minors processing program (CAM), a program that successfully allowed some children to apply for permission to come to the United States directly from their country rather than travel to the United States and seek protection at the border. The Trump administration intentionally ended the program in 2017 as part of its multi-pronged effort to curtail access to protection. The suggestion to reconsider that decision comes at an unacceptable and illegal cost: namely, requiring that those who “circumvent the process and come to the United States without authorization can be promptly returned home.” What the administration means with this language is the elimination of protections and asylum procedures at our border.

The right to apply for asylum in the United States, whether at a port of entry or otherwise, is firmly enshrined in U.S. immigration law. The administration has levied attack after attack on that right in the last two years, and in practice already has severely curtailed access while proposing countless—often illegal—other measures to do so. While the wording is vague, the administration’s suggestion that someone potentially eligible for CAM could no longer apply for asylum in the United States if arriving without authorization squarely contradicts obligations under international and domestic law. In practice, it would trap thousands of children in what could be dangerous, life-threatening situations without granting access to a protection process if they flee.

The Real Solutions to the Fake “Crisis” at the Border

The administration continues to deliberately violate U.S. and international law and ignore the readily available solutions to processing refugees seeking asylum at the border. Instead of preventing access to asylum, creating backlogs, and putting children and asylum seekers in danger, it should:

- Resource the effective and efficient administration of the screening and processing of protection requests made at our borders by funding ports of entry, immigration courts, and asylum officers so that asylum seekers can be efficiently and effectively processed when they arrive at our border seeking protection.
- Ensure that Border Patrol stations and ports of entry are staffed with child welfare workers qualified to assist with the short-term custody of unaccompanied children, family units, and other vulnerable populations.
- End any practice of “metering” or “queue management” that illegally forces those seeking asylum to wait in Mexico, often for days and weeks, to present themselves at a port of entry. Even the DHS Office of Inspector General (OIG) recently found evidence that these practices may force asylum seekers to instead try to cross between ports.
- Respect the rule of law and right to apply for asylum by rescinding policies and plans for policies that illegally deny access to the U.S. asylum process. These include the “Asylum Ban” the administration announced in November 2018 and the “Remain in Mexico” plan announced in December 2018.
- Maintain critical legal protections governing the treatment, custody, and access to asylum for all unaccompanied children, including as found in the TVPRA and in the *Flores* Settlement Agreement.
- Expand and use proven, cost-effective case management support programs that facilitate the immigration process while someone resides in the community rather than in an immigration jail. The administration ended one such government program in 2017 despite compliance rates of over 99 percent at a fraction of the cost of detention.

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January 2019