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Unaccompanied Children from Central America – Caught in the Crosshairs of President Trump’s Executive Orders

On January 25 and 27, President Trump issued three Executive Orders (EOs) relating to the U.S. immigration and refugee system. On March 6, after the Ninth Circuit Court of Appeals left in force a February 3 temporary restraining order on the enforcement of the travel ban by a federal judge in Washington State,¹ President Trump rescinded the January 27 order and issued a new, similar executive order in its place. The March 6 order, in part, renewed the suspension on applications for refugee status and significantly reduced the number of refugees the United States would accept for fiscal year 2017. Although litigation on the travel ban is ongoing and media attention has focused on the serious, negative impact on travelers from Muslim-majority countries, the EOs and the implementing guidance continue to affect unaccompanied children and their parents or guardians. The orders could undermine the safety and threaten lives of these children in the following ways.

Children apprehended without a parent or legal guardian risk losing their status as an “unaccompanied” child and the critical protections that attach with that designation

The Border Enforcement memo requires that Department of Homeland Security (DHS) officials are trained on the proper application of Section 235 of the Trafficking Victims Protection Reauthorization Act (which provides protections for unaccompanied children) and Section 462(g)(2) of the Homeland Security Act (which provides the legal definition of an unaccompanied alien child). This particular focus on the definition and on these children may signify the beginnings of an attempt to narrow the application of the definition, and the result will be that more children are deemed “accompanied” subjecting them to adult detention facilities and possible application of expedited removal procedures to children. The DHS implementing memo requires US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE) to develop uniform written guidance and establish a review process to determine whether or not a child still qualifies for legal protections afforded to unaccompanied children as they go through the removal process. This could mean once a child is reunified with a parent or legal guardian from Office of Refugee Resettlement (ORR) custody they would no longer be afforded important protections such as the right to affirmative asylum, not being subject to the one-year filing deadline, or access to important social services aimed at identifying children at risk of trafficking. And, as mentioned above, they could be placed in adult detention facilities and be subject to expedited removal.

Unaccompanied children from Central America and their family members or caretakers are at a heightened risk for deportation.

¹ Washington v. Trump, [No. 17-35105](#) (9th Cir. Feb. 9, 2017) (denying the government’s emergency motion for a stay of the temporary restraining order).

The “Enhancing Public Safety in the Interior of the United States” EO (Interior Enforcement EO) directs the DHS to prioritize the deportation of “removable aliens” on several broad bases, including: a final order of removal, a conviction for “any criminal offense” (which can include misdemeanor offenses); a criminal charge that “has not been resolved” (covering an individual who has been charged but not convicted of a crime); commission of “acts that constitute a chargeable criminal offense”; fraud or willful misrepresentation in an official manner; abuse of public benefits; or posing a risk to public safety or national security, “[i]n the judgment of an immigration officer.”²

Although the meaning of these broad provisions has not yet been tested, they could apply to some unaccompanied children who are not already in removal proceedings. In addition, children’s caretakers and family members could be placed in removal proceedings, detained by ICE, or deported if they fall into one of the broad and vague categories for prioritized removal.

Moreover, the DHS guidance implementing the Interior Enforcement EO expands the authority of immigration officers by making all undocumented persons a priority for removal, which could make unaccompanied children and their family members more likely to be placed in removal proceedings in the first place.

Parents or family members of unaccompanied children could be deported or criminally prosecuted for facilitating their child’s travel to the United States, resulting in the child’s prolonged detention in federal custody.

The DHS Guidance implementing the “Border Security and Immigration Enforcement Improvements” EO (Border Enforcement EO Guidance)³ directs CBP and ICE to enforce U.S. immigration laws against any individual, including a parent or family member, who “directly or indirectly” facilitates travel for their child to the United States.⁴ This means they could be placed in removal proceedings or subject to criminal prosecution. This threat of removal or criminal prosecution of parents or other family members could be particularly harmful to unaccompanied children. Fearing prosecution, a child’s sponsor could be too afraid to claim custody over the child. Or, the parents could risk prosecution by claiming custody but then subsequently be jailed or deported as provided in the Border Enforcement EO Guidance. In either scenario, the child will be forcibly separated from his or her parents or family members and kept in federal custody for a prolonged period. Either scenario is traumatic and harmful for unaccompanied children, especially given the vulnerable state the children are in when detained at the border.

Unaccompanied children from Central America could be sent back to Mexico during removal proceedings, leaving the children exposed and vulnerable.

² “Enhancing Public Safety in the Interior of the United States,” [Exec. Order No. 13768](#), 82 Fed. Reg. 8799 (Jan. 25, 2017) [hereinafter Interior Enforcement EO], section 10.

³ [Implementing the President’s Border Security and Immigration Enforcement Improvements Policies](#) (Dep’t of Homeland Sec. Feb. 20, 2017) [hereinafter Implementing Guidance on Border Enforcement EO]. This Guidance implements the executive order on “Border Security and Immigration Enforcement Improvements,” [Exec. Order No. 13767](#), 82 Fed. Reg. 8793 (Jan. 25, 2017) [hereinafter Border Enforcement EO].

⁴ Implementing Guidance on Border Enforcement EO, section M.

Under the Border Enforcement EO, migrants who entered the United States “from contiguous territory” may be returned to that territory pending removal proceedings.⁵ This provision is not limited to nationals of a contiguous country. Therefore, it could apply to unaccompanied children from Central America who entered the United States through Mexico. The EO does not specify whether and how children who are Mexican nationals seeking asylum or other protection in the United States could be subject to this provision.

Refugee children applying for protection through the Central American Minors program are in an extremely dangerous situation as the doors to safety have been temporarily shut.

The “Protecting the Nation from Foreign Terrorist Entry into the United States” EO (March 6 Order)⁶ revoked the original order⁷ of the same name. As with its predecessor, the March 6 order suspends all refugee resettlement under the U.S. Refugee Admission Program (USRAP) for 120 days. The March 6 order also restarts the clock on the 120-day suspension period, thereby extending the suspension of the USRAP. The March 6 order also reduces the number of refugees that can be resettled in the U.S. from 110,000 to 50,000 for FY 2017.⁸ This EO also calls for a review of the refugee adjudication process to identify and implement additional procedures to ensure that those admitted as refugees do not pose a threat to the “security and welfare” of the United States.⁹

Some Central American children are eligible to enter the United States under the Central American Minors (CAM) program, which allows lawfully present parents in the United States to request refugee status or humanitarian parole¹⁰ for their children in El Salvador, Honduras, and Guatemala.¹¹ Suspending the refugee resettlement program keeps such children trapped in their countries of origin, where they face grave danger for at least an additional four months. At least one child has died while waiting for a decision.¹²

The Border Enforcement EO also specifically suggests limiting how DHS grants parole,¹³ which could negatively affect CAM applicants who are granted humanitarian parole instead of refugee status. Additionally, many children seek asylum, and, because approval as an

⁵ Border Enforcement EO, section 7 (citing Immigration and Naturalization Act, § 235(b)(2)(C), 8 U.S.C. § 1225(b)(2)(C)); *see also* Implementing Guidance on Border Enforcement EO, section H (reiterating the intention to return migrants who travel through Mexico to the United States back to Mexico pending their removal proceedings).

⁶ “Protecting the Nation from Foreign Terrorist Entry into the United States,” [Exec. Order No. 13780](#), 82 Fed. Reg. 13209 (March 6, 2017) [hereinafter March 6 Order], section 13.

⁷ “Protecting the Nation from Foreign Terrorist Entry into the United States,” [Exec. Order No. 13769](#), 82 Fed. Reg. 8977 (Jan. 27, 2017).

⁸ March 6 Order, sections 6(a)–(b).

⁹ *Id.* at section 6(a).

¹⁰ Parole allows an individual, who may be inadmissible or otherwise ineligible for admission into the United States, to be paroled into the United States for a temporary period. The Immigration and Nationality Act (INA) allows the DHS Secretary to use his or her discretion to parole any foreign national for urgent humanitarian reasons or for significant public benefit. Immigration and Naturalization Act, 8 U.S.C. § 1182(d)(5).

¹¹ *Central American Minors Program*, U.S. DEP’T OF STATE, <https://www.state.gov/j/prm/ra/cam/index.htm>.

¹² Armando Trull, *Pleas for Asylum Enter a System that Can’t Outpace Deadly Consequences*, WAMU (Sept. 21, 2016) http://wamu.org/story/16/09/21/pleas_for_asylum_enter_a_system_that_cant_outpace_deadly_consequences/.

¹³ Border Enforcement EO, section 11.

asylee requires meeting the definition of a refugee, changes to the refugee adjudication process could extend to the asylum adjudication process and affect the adjudication of children's asylum claims.

Weakened privacy protections for sponsors and family members make them more vulnerable to deportation and could result in prolonged detention for UACs.

The Interior Enforcement EO eliminates existing Privacy Act protections for persons who are neither U.S. citizens nor lawful permanent residents.¹⁴ Although the Privacy Act of 1974¹⁵ prohibits federal agencies from disclosing personally identifiable information pertaining to a U.S. citizen or lawful permanent resident without that individual's written consent,¹⁶ previous DHS policy had extended these statutory protections to all individuals, regardless of immigration status.¹⁷ However, in its Guidance implementing the Interior Enforcement EO, DHS rescinded this previous policy, thereby removing Privacy Act protections from individuals who are neither U.S. citizens nor lawful permanent residents.¹⁸

Accordingly, this EO provision, along with DHS's guidance, could result in the Office of Refugee Resettlement (ORR) sharing information about a child's sponsor or family member—including immigration status—with DHS for immigration enforcement purposes. It could put the sponsors at risk for immigration enforcement actions and make them reluctant to come forward to sponsor a child. This would force unaccompanied children to remain in ORR detention for longer periods of time.

Unaccompanied children could face significant delays in their immigration cases as resources are directed to detention.

The Border Enforcement EO calls for assigning Immigration Judges and Asylum Officers to immigration detention facilities to process cases of detained migrants.¹⁹ Diverting personnel and resources to detention centers likely will significantly increase delays in immigration court and at U.S. Citizenship and Immigration Services (USCIS) Asylum Offices for cases involving non-detained unaccompanied children.

The implementation of the EOs has created confusion and uncertainty, and their overly broad application has already ensnared unaccompanied children.

Although the scope of the Executive Orders and their implications for unaccompanied children remain unclear, the orders have generated significant uncertainty and, in at least one instance so far, a tangible and dangerous effect on unaccompanied children being resettled in the United States as refugees.

[On Monday, January 30](#), just days after President Trump issued the three EOs, four children from El Salvador and their caseworker were detained by U.S. Customs and Border Protection (CBP) agents at Miami International Airport. These children had already been approved for refugee status through the CAM program and had initially passed through customs with no interruption. However, while waiting at their gate for the next leg of their trip, CBP agents

¹⁴ Interior Enforcement EO, section 14.

¹⁵ 5 U.S.C. § 552a.

¹⁶ 5 U.S.C. § 552a(a)(2); enumerated exceptions apply.

¹⁷ Privacy Policy Guidance Memorandum, 2007-1, 2 (Dep't of Homeland Sec. Jan. 7, 2009).

¹⁸ Implementing Guidance on Interior Enforcement EO, section G.

¹⁹ Border Enforcement EO, sections 5(b)–(c).

met the children and took them to secondary detention to ensure that they complied with new vetting procedures. The children and their caseworker then were moved to a back room, where they were detained for almost four hours without food or water in a cold room. The children were terrified and cried, and their caseworker described an atmosphere of confusion among the CBP agents. The children were taken back to secondary detention, where they waited an additional hour before receiving a waiver granting them entry to the United States. The four children were released, but three of them missed their flights and had to stay the night at the airport. The caseworker, who had previously been on seven trips to resettle unaccompanied children approved by the CAM program, had never been detained or experienced such levels of confusion while interacting with border officials.

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