



UNA ★ USA
Southern New York State Division

UN Universal Periodic Review
Stakeholder Report:
United States of America
“Immigrant Children and Human Rights”

Submitted: September 30, 2019

UNA-Southern New York State Division (UNA-SNY) is dedicated to building a strong network of global citizens in support of the United Nations. We work hard to inform, inspire and mobilize members of the community to engage with critical global issues central to the work and mission of the United Nations. We include the New York, Brooklyn, Queens, Bronx, Long Island, Mid-Hudson Valley, and Westchester UNA Chapters and groups. The goal of the division is to foster dialogue and awareness in the region, as well as to coordinate with our chapters and the broader UNA-USA network. For more information, please visit: <http://www.unasny.org/>.

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A. Summary: Immigrant Children and Human Rights

(A1) Towards the goal of contributing primary-source input for the Universal Periodic Review of the United States in May 2020, the UNA-Southern New York State Division (UNA-SNY) submits this individual stakeholder report with a focus on immigrant children and human rights. To compile this report, the division organized a grassroots consultation with local advocates and organizations. Specifically, this report addresses three issues:

- Effects of Immigration Policies on Children;
- Family Separation Policy and Legal Representation;
- Treatment of Children in Custody

(A2) UNA-Southern New York State Divisionⁱ is dedicated to building a strong network of global citizens in support of the United Nations. We work hard to inform, inspire and mobilize members of the community to engage with critical global issues central to the work and mission of the United Nations. We include the New York, Brooklyn, Queens, Bronx, Long Island, Mid-Hudson Valley, and Westchester UNA Chapters and groups. The goal of the division is to foster dialogue and awareness in the region, as well as to coordinate with our chapters and the broader UNA-USA network.

B. Methodology

(B1) This stakeholder report was compiled through a consultation process in which UNA-SNY held its 6th annual Consultation on Race, Criminal Justice and Human Rights on July 8, 2019. Participants discussed U.S. policies regarding the treatment of immigrant children and asylum-seekers, particularly at the southern U.S. border. The consultation included 44 invited experts and community members as well as a dozen civil society co-sponsors. Participants were asked to share their firsthand experiences on the domestic U.S. human rights record pertaining to immigrant children and human rights and offer constructive ideas, suggestions, and recommendations. A rapporteur was present to record, consolidate, and synthesize output from the discussion. In drafting and compiling this report, UNA-SNY identified prominent trends, recommendations, and other content that emerged from the consultation. The findings, conclusions, and recommendations therein are submitted with the goal of constructively advancing human rights in the U.S.ⁱⁱ

C. Legal Framework

(C1) Migrant children are entitled to all of the human rights established in the Universal Declaration of Human Rights as well as other human treaties that the U.S. has ratified including the the International Covenant on Civil and Political Rights (ICCPR), the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Elimination of All Forms of Racial Discrimination. As such, migrant children, as with any other persons, have a right to lifeⁱⁱⁱ, equality and non-discrimination in the enjoyment of human rights^{iv}, protection against arbitrary arrest and detention^v, protection against torture and inhumane treatment^{vi}, non-refoulment^{vii}, family rights^{viii}, a right to health^{ix}, and a right to primary education.^x



(C2) The United States supported recommendations during the 2nd cycle of the UPR from Sweden, France, Portugal, Canada and other States to ratify the Convention on the Rights of the Child. To date, it remains the only UN Member State not a party to the Convention.

(C3) The United States supported a recommendation during the 2nd cycle of the UPR from Brazil to “Consider alternatives to the detention of migrants, particularly children.” It also supported a recommendation from Thailand during the same cycle to “Treat migrant children in detention with due respect to human rights.”

D. Effect of Immigration Policies on Children

(D1) Beginning in 2017, the Trump Administration issued 19 executive orders or took other actions designed to restrict immigration. They include lowering refugee admissions, financially targeting sanctuary cities, increasing the numbers of undocumented persons arrested, and seeking to end family reunification (often referred to as “chain migration”).

(D2) The Trump Administration has also significantly restricted the admission of refugees into the U.S. Restrictions on these admissions have had a particularly adverse effect on children whose families are fleeing violence and persecution in their home countries and seeking asylum in the U.S. In September 2019 President Trump instituted by far the lowest ever cap on refugee admissions. In FY 2020 the cap will be 18,000 persons, including only 1,500 from Latin America and the Caribbean.^{xi} President Obama had set a ceiling of 110,000 for FY 2017; the Trump Administration allowed only 54,000 to enter and reduced the ceiling for FY 2018 to 45,000 and for FY 2019 to 30,000.^{xii} In the past two years the Administration has also proposed elimination of Temporary Protected Status (TPS) for persons from El Salvador, Nicaragua, Haiti, and Sudan. TPS refers to immigrants who had earlier been admitted because of political or environmental crises in their home countries. (TPS and Deferred Action for Childhood Arrivals, or DACA, account for roughly a million unauthorized immigrants with temporary permission to live and work in the U.S.). Greater U.S. attention and resources should also be devoted to prevention. Rather than funding cuts, U.S. aid to Central American countries should be increased to promote good governance and tackle crime.

(D3) In another problematic move, the Trump Administration declared that persons seeking asylum in the U.S. from certain countries in Central America first must seek asylum in a transit country. However, it is important to uphold America’s obligations to protect the human rights of those fleeing their countries in the darkest of times and not place barriers in their path. Greater U.S. attention and resources should also be devoted to U.S. aid to Central American countries to promote good governance and tackle crime.

(D4) The Trump administration also effectively reduced admission of refugees by announcing that victims of private crime, including domestic and gang violence in their home country, would no longer automatically qualify for asylum in the U.S. This decision overturned two asylum rulings during the previous Administration. However, in December the District of Columbia District Court ruled in favor of 12 adults and children who claimed to have been sexually abused, kidnapped, and beaten in their home countries and sought asylum in the United States. The judge wrote that the Administration’s policy violated the Administrative Procedure Act (APA) and the Immigration and Nationality Act (INA) and was inconsistent with the intent of Congress and therefore unlawful.^{xiii}



UNA USA
Southern New York State Division

(D5) Recommendations for the United States

- Extend refugee status to asylum-seekers fleeing domestic and gang violence in their country of origin.
- Ensure that the rights of immigrant families and children are protected no matter their legal status.

E. Family Separation Policy and Legal Representation

(E1) The Administration announced in May 2018 a “zero tolerance policy” by which it would prosecute parents who crossed the U.S. border illegally with their children, separate parents from their children pending resolution of their cases and place the children in shelters or with families. The policy applied to those crossing the border illegally, not those requesting asylum at ports of entry. However, those caught crossing the border illegally would still be permitted to apply for asylum. Furthermore, there is no comprehensive system to track the whereabouts of children after they have been separated from their families, often resulting in a complex and lengthy process of reunification.

(E2) Regarding the separation of children from their families, the durations, conditions, stressfulness, and indeed morality continue as a churning debate. Photos of weeping children, of teens caring for babies who have been jailed in cages, of lines of children and teens being moved from one place to another, have peppered newspapers and social media, resulting in outcries throughout the country.

(E3) Due to outcry among the public and within the government, the President signed an executive order on June 20 directing the Department of Homeland Security to keep detained families together and called on the Department of Defense to assist in providing housing for families when detention centers were at capacity. However, information regarding the family separation policy has been unclear. Investigations have determined that the separation policy had been in effect for a year before it was announced, and that hundreds more children have been taken into custody up to the present. Furthermore, the Inspector-General’s Office in the Department of Homeland Security has issued a report stating that apprehensions have significantly increased over the past two years and dangerous overcrowding and prolonged detentions continue to affect immigrant parents and their children.^{xiv}

(E4) There is also concern regarding appropriate legal representation for immigrant families and children as neither children nor adults have a right to legal counsel in immigration court. In the United States, immigrant children who are subject to deportation or asylum hearings are not entitled to court-appointed lawyers. In 2014, the American Immigration Council, the American Civil Liberties Union, and other non-profit organizations sued the U.S. government for alleged violations of the due process clause of the Fifth Amendment and the Immigration and Nationality Act, demanding that immigrant children be given court-appointed free legal aid in immigration proceedings. The 9th Circuit Court of Appeals rejected the lawsuit in 2016 on a question of jurisdiction and rejected a similar high-profile lawsuit in January 2018.^{xv} Furthermore, increased immigration rates mean that judges are over-burdened and often have nearly three cases of immigration or asylum status a day. Parents are also fearful of coming forward as their child’s sponsor during immigration hearings due to targeting of sponsors for immigration enforcement, often leaving children with no support at all in court.



(E5) Recommendations for the United States:

- Completely revoke the family separation policy and take all necessary measures to reunite children with their families.
- Provide immigrants, especially unaccompanied children, with legal services during immigration and asylum hearings.
- Provide additional support to immigration judges and attorneys to ensure that cases are reviewed in a timely and thorough manner.

F. Treatment of Children in Custody

(F1) Children arriving at the border, accompanied or unaccompanied, have been taken into custody, separated from their parents or guardians, detained against their will in hostile environments, placed in federal or private detention centers, provided with minimal care, and transferred to other temporary care centers throughout the country. Conditions of confinement are reported to vary greatly, from limited to deplorable, from barracks to cages, and with review by outsiders including members of Congress highly circumscribed or completely prevented.

(F2) Children subjected to the immigration system face trauma from separation from parents, confinement, questioning, and incarceration. There have also been 4,500 complaints of sexual abuse against unaccompanied immigrant minors held in custody from 2014 to 2018.^{xvi} There are very limited mental health services available to children and educational and recreational opportunities essential to their development are severely restricted.

(F3) In June 2019 the government appeared before the United States Court of Appeals for the Ninth Circuit, in San Francisco in a case about “how the federal government is legally obligated to treat migrant children who are in custody.”^{xvii} A Justice Department Attorney argued that the government “shouldn’t be required to give detained migrant children toothbrushes, soap, towels, showers or even half a night’s sleep inside Border Patrol detention facilities.”^{xviii} The U.S. Court of Appeals on August 19 ruled against the Trump administration, with one judge writing that “assuring that children eat enough edible food, drink clean water, are housed in hygienic facilities with sanitary bathrooms, have soap and toothpaste, and are not sleep-deprived are without doubt essential to the children’s safety.”^{xix} However, detained migrant children still face inhumane conditions in detention facilities that are detrimental to their physical, mental, and emotional wellbeing.

(F4) Recommendations for the United States:

- Seek alternatives to the present detention system, including emphasis on due process, justice and humane treatment.
- Improve conditions of confinement to meet basic human rights standards.



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Endnotes

ⁱ The United Nations Association Southern California is a 501(c)(3) not-for-profit organization. For more information visit, <http://www.unasny.org/>

ⁱⁱ The order of the issues presented in this report does not imply a prioritization of observations or recommendations.

ⁱⁱⁱ UN General Assembly, Resolution 23/20, *Human rights of migrants*, UN Doc. A/HRC/RES/23/20, 26 June 2013, para. 4(c).

^{iv} Article 2(2) of the [International Covenant on Economic, Social and Cultural Rights](#)

^v ICCPR, art. 9

^{vi} Article 2(2) of the Convention against Torture

^{vii} Article 3 of the Convention against Torture, 1951 Convention relating to the Status of Refugees

^{viii} IACHR, Report No. 81.10, Case 12.562, Wayne Smith, Hugo Armendariz, et al. (United States), July 12, 2010.

^{ix} CRC, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside of Their Country of Origin*, UN Doc. CRC/GC/2005/6, 1 September 2005, para. 46.

^x Convention on the Rights of the Child, art. 28(1)(a); ICESCR, art. 13.2(a), 14; American Convention, art. 13.3(a); European Social Charter (revised) (adopted 3 May 1996, entry into force 1 July 1999), 2151 UNTS 277, art. 17

^{xi} Michael D. Shear and Zolan Kanno-Youngs, “Trump Slashes Refugee Cap to 18,000, Curtailing U.S. Role as Haven,” *New York Times* September the 26, 2019. <https://www.nytimes.com/2019/09/26/us/politics/trump-refugees.html>

^{xii} Jens Manuel Krogstad, “Key Facts about Refugees to the U.S.” Pew Research Center, September 13, 2019,

<https://www.pewresearch.org/fact-tank/2019/09/13/key-facts-about-refugees-to-the-u-s/>

^{xiii} “Federal Policy on Immigration, 2017-2020.” *Ballotpedia*, ballotpedia.org/Federal_policy_on_immigration_2017-2020#June_11.2C_2018:_Sessions_says_individuals_who_are_victims_of_private_crime_not_eligible_for_asylum.

^{xiv} https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf

^{xv} Macguill, Dan. “Do Children in Immigration Proceedings Have No Right to Court-Appointed Representation?” *Snopes.com*, 29 June 2018, www.snopes.com/fact-check/children-immigration-court-deportation-attorney/.

^{xvi} Trimble, Megan. “HHS, DOJ Received Thousands of Sex Abuse Claims from Migrant Minors.” *U.S. News & World Report*, U.S. News & World Report, 26 Feb. 2019, www.usnews.com/news/national-news/articles/2019-02-26/hhs-doj-received-thousands-of-abuse-allegations-of-unaccompanied-migrant-children-in-us-custody.

^{xvii} Fernandez, Manny. “Lawyer Draws Outrage for Defending Lack of Toothbrushes in Border Detention.” *The New York Times*, The New York Times, 25 June 2019, www.nytimes.com/2019/06/25/us/sarah-fabian-migrant-lawyer-doj.html?campaignId=7JFJX.

^{xviii} Flynn, Meagan. “Detained Migrant Children Got No Toothbrush, No Soap, No Sleep. It's No Problem, Government Argues.” *The Washington Post*, WP Company, 21 June 2019, www.washingtonpost.com/nation/2019/06/21/detained-migrant-children-no-toothbrush-soap-sleep/.

^{xix} Thomsen, Jacqueline. “9th Circuit Rejects DOJ's Definition of 'Safe and Sanitary' Conditions for Migrant Children.” *National Law Journal*, 15 Aug. 2019, www.law.com/nationallawjournal/2019/08/15/9th-circuit-rejects-doj-s-definition-of-safe-and-sanitary-conditions-for-migrant-children/?slreturn=20190820160254.