

United States Senate

WASHINGTON, DC 20510

January 21, 2016

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

We write with regard to the Department of Homeland Security's recent targeted enforcement operations against mothers and children from El Salvador, Honduras and Guatemala. While we commend you for this week's announcement that you will establish a new refugee process for nationals from these countries, we continue to have serious reservations about these ongoing immigration raids.

We are deeply concerned that in its eagerness to deter additional arrivals from this region, the Department is returning vulnerable individuals with valid protection claims to life-threatening violence. This is not hyperbole. There have been multiple reports of individuals, including children, being killed within days or weeks of their deportation. Moreover, we do not accept the argument that removing these individuals will deter additional children and families from fleeing the Northern Triangle. That argument relies on the false premise that most of these people are not fleeing extraordinary danger. A Department of State Congressional Notification from just two weeks ago warns that El Salvador risks "losing an entire generation of young people due to violent conflict" and notes that the already stunning rates of violence had increased dramatically in May "following the deterioration of a gang truce forged in 2012, driving a surge of migration of unaccompanied children (UCs) to the United States." The global refugee crisis has provided countless examples of people taking enormous risks against all odds in order to escape persecution and there is no reason to believe that is any less true for those in Central America.

We are troubled by the priorities reflected in these enforcement actions. It is important to evaluate this as a humanitarian and refugee crisis involving a vulnerable population and not strictly as a border security and immigration enforcement matter. Targeting families contradicts the administration's repeated commitment to focus its enforcement resources on removing felons *not* families. We understand that you consider these children and families to be enforcement priorities because they are recent border crossers, but targeting them for deportation disregards the conditions they will face in their home countries and is clearly less important than locating and removing violent criminals from our communities.

Given the particular risks faced by these mothers and children, the tactic of using widely publicized, aggressive removal operations – often in the wee hours of the morning – is shocking and misguided. These raids have created widespread fear in immigrant communities around the country, and damaged trust in local law enforcement. Raids of this nature are not appropriate when the federal government is interacting with vulnerable children and will only exacerbate the

trauma experienced by these children. We ask that you stop these aggressive raids against children and their families and rely on more appropriate approaches to fulfilling court orders.

There have also been multiple reports that individuals targeted by these raids were not provided meaningful due process or access to competent counsel. This is deeply concerning as it undermines the legitimacy of our immigration court system. We ask that you slow down the fast-track immigration process forced on many of these families and unaccompanied children, to ensure that this particularly vulnerable population is able to receive meaningful due process, access to counsel, and a full and fair hearing of their legal claims.

The humanitarian crisis in the Northern Triangle countries is undeniable. From 2008 to 2014, the United Nations High Commissioner for Refugees (UNHCR) documented a 1,185% increase in asylum applications from El Salvador, Honduras and Guatemala -- filed not in the United States, but in Belize, Costa Rica, Mexico, Nicaragua, and Panama.¹ The brutal violence inflicted by armed groups throughout these countries is forcing people to flee to wherever they can find safety.

Children and women are particularly at risk. According to a 2014 UNICEF report El Salvador and Guatemala have the highest child murder rates in the world – about 27 and 24 child murders per 100,000 people respectively. By comparison, Iraq has a rate of 4 per 100,000, and Afghanistan's rate is 8 per 100,000.² The resulting need for international protection is well-documented by credible international organizations. In 2014, UNHCR interviewed 404 children arriving at the U.S. border from the Northern Triangle and found that no less than 58 percent of them were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection, up from 13 percent in 2006.³ The administration's own Central American Minors program has granted refugee status to 30 percent of the Salvadoran children it has reviewed so far. For women, the picture is equally grim. According to UNHCR, Honduras and El Salvador rank first and third for rates of female homicide globally – about 90 and 82 murders of women per 100,000 people respectively. The global average is 6 per 100,000.⁴

Secretary Johnson's recent announcement regarding the targeted enforcement actions itself acknowledges that conditions have deteriorated in the Northern Triangle to a degree that warrants the creation of a new refugee process for those nationals. We applaud the recognition that the region is experiencing the kind of violence and forced displacement that will produce claims for refugee status under our law. Although we are strongly supportive of this new effort with UNHCR and urge swift action, the proposal stands in stark contrast to the enforcement

¹ UNHCR, "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection," 2014, available at <http://unhcrwashington.org/children>

² United Nations Children's Fund, "Hidden in Plain Sight: A Statistical Analysis of Violence Against Children," 2014, available at http://www.unicef.org/publications/index_74865.html

³ UNHCR, "Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection," 2014, available at <http://unhcrwashington.org/children>

⁴ UNHCR, "Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico," 2015, available at <http://www.unhcr.org/5630f24c6.pdf>

actions specifically targeting families and unaccompanied children who have fled that very region.

Our concerns with these removal operations are not answered by the Department's position that it has selected only those families and children with final orders of removal. The administration's decision to place families and children arriving from Central America since the summer of 2014 in a fast-track process has made the already daunting process of obtaining counsel and adequately preparing a case extraordinarily difficult. And any honest assessment of our immigration system must acknowledge that its complexity renders it nearly impossible to navigate without experienced counsel, even for those with the strongest legal claims for asylum and other immigration relief. That fact is particularly true for children or those with little education, who do not speak English and have suffered extreme trauma. These concerns about meaningful due process have been reinforced by the fact that the Board of Immigration Appeals has taken the extraordinary step of granting emergency stays of removal for many of the targeted families, notwithstanding final administrative removal orders.

For those individuals that remain in your custody, we strongly urge you to ensure that no removals take place until you can confirm that each individual was afforded a full and meaningful review of the merits of his or her case. Such confirmation should include, at a minimum, an assessment of whether the individual was adequately represented at his or her removal proceeding and whether the individual had a meaningful opportunity to present a claim for protection. We understand that representation is not legally required, but we strongly believe that the risks faced by this particular population warrant extra care and may be necessary to satisfy our international obligations not to return refugees and asylum seekers into the hands of their persecutors.

Additionally, we are increasingly concerned with the ongoing cost of this so-called deterrence approach. The administration's decision to contract with the Corrections Corporation of America to construct and operate a massive detention facility specifically for mothers and children at an expense of \$343 dollars per person per day costs the taxpayers over \$800,000 *a day*. Setting aside our significant due process and humanitarian concerns, we simply reject the notion that this is a wise use of funds.

Finally, we urge you to consider designating Guatemala and re-designating El Salvador and Honduras for temporary protected status (TPS). As you know, TPS can be granted to nationals of another country who are currently residing in the United States if extraordinary and temporary conditions prevent a safe return to their country. TPS does not grant any immigration status, but allows eligible nationals of designated countries to remain in the United States legally until the designation expires. In light of the conditions outlined above, the countries of the Northern Triangle clearly meet the statutory standard for TPS.

The humanitarian crisis in our hemisphere compels us to affirm our fundamental value of protection. We understand your desire to deter additional families from making the perilous journey to the United States, but we must not forsake those with potential claims for protection in pursuit of that objective. As you continue to address the challenges of this humanitarian situation, we urge you to ensure that our efforts are implemented in a manner consistent with our values of protection and due process.

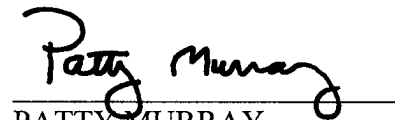
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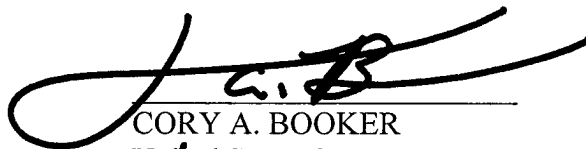
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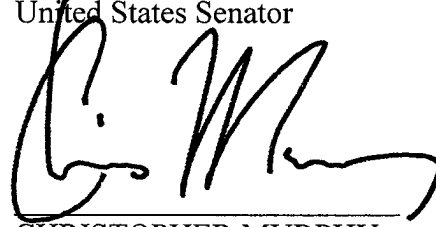
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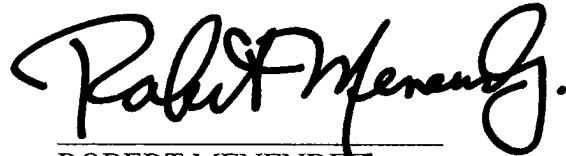
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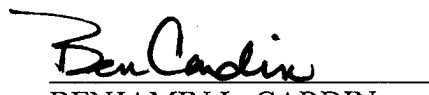

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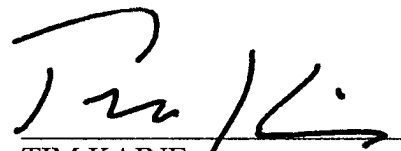

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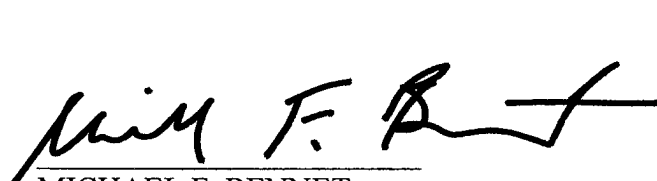

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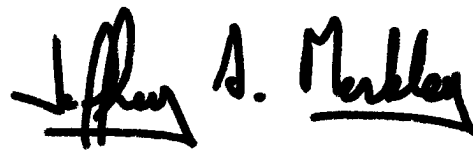

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JEFFREY A. MERKLEY
United States Senator

cc: The Honorable John Kerry, United States Secretary of State
The Honorable Loretta Lynch, Attorney General of the United States
The Honorable Jeh Johnson, United States Secretary of Homeland Security