



CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW  
256 SOUTH OCCIDENTAL BOULEVARD  
LOS ANGELES, CA 90057  
Telephone: (213) 388-8693  
Facsimile: (213) 386-9484  
[www.centerforhumanrights.org](http://www.centerforhumanrights.org)

January 25, 2019

To: Chairman/Ranking Member, Senate Comm. on Homeland Security & Governmental Affairs  
Chairman/Ranking Member, Senate Committee on the Judiciary  
Chairman/Ranking Member, Senate Subcommittee on Border Security & Immigration  
Chairman/Ranking Member, House Committee on the Judiciary  
Chairman/Ranking Member, House Committee on Homeland Security  
Chairman/Ranking Member, House Committee on Appropriations  
Chairman/Ranking Member, House Subcommittee on Border and Maritime Security  
Chairman/Ranking Member, House Subcommittee on Immigration and Citizenship  
Chairman/Ranking Member, House Subcommittee on Homeland Security

From: Peter Schey, President, Center for Human Rights and Constitutional Law

Re: Negotiating a funding resolution that does not endanger the lives of immigrant children

Dueling bills to end the government shutdown failed in the Senate and last Friday Democrats and Republicans reached agreement on a temporary end of the shutdown until February 15, 2019. Congress and the White House committed to negotiate over the next three weeks border security, relief for DACA and TPS recipients, and the treatment of immigrant children from Central America. The issue of Central American minors was injected into the shutdown discussion by President Trump in a January 4, 2019, letter to Congress, and again last week in the Senate's *End the Shutdown and Secure Border Act of 2019* ("2019 Secure Border Act"), that received fifty votes in the Senate. The starting point for these negotiations may be the House's supplemental appropriations act and President Trump's 2019 Secure Border Act.

This memorandum briefly reviews key provisions in the 2019 Secure Border Act that dramatically impact the rights of migrant children and explains why these provisions should not be part of any budget resolution negotiated by Congress and the White House. Adopting the Secure Border Act's provisions on immigrant children would lead to the persecution, torture, and possibly the death of Central American minors who seek asylum in the United States. It would also violate the law of the land.

Pursuant to a nationwide settlement we reached in 1997 in the case now designated *Flores, et al., v. Whitaker, et al.*, No. CV 85-4544 DMG (C.D. Cal), we represent tens of thousands of immigrant children detained each year by CBP, ICE, and ORR. The settlement currently sets the national standards for the care and release of detained children.

A long-term spending bill should prohibit funds being used to (1) forcibly separate children and their parents, (2) terminate the rights children now possess under the *Flores* settlement, or (3) deny asylum to children who possess valid claims under U.S. and binding international laws.

A negotiated spending bill should exclude the Secure Border Act's provisions that will encourage minors to enter the U.S. unlawfully, and if apprehended, authorize their summary deportation to countries where they face persecution even when they possess valid asylum claims.

Section 103 of the 2019 Secure Border Act, makes minors from El Salvador, Guatemala, and Honduras, ineligible to apply for asylum in the United States. This is accomplished by amending Section 208(a)(2) of the Immigration and Nationality Act (“INA”), adding language that these Central American minors can only apply for asylum “outside of the United States at a Designated Application Processing Center in Central America.” Before applying for asylum with a Designated Application Processing Center, these minors must first apply for asylum with the United Nations High Commissioner for Refugees (UNHCR), or a non-governmental organization designated by the Secretary of Homeland Security (no details are provided about this process), and the UNHCR or the non-governmental must advise DHS that the minor “is likely to be eligible for asylum ...”

Even if a minor’s asylum claim is approved by a U.S. Application Processing Center, the minor will still not be admitted to the U.S. if the minor was previously denied asylum (even if new facts warrant a different decision), or if the minor does not have “a qualified parent or guardian [living] in the United States capable of taking custody and care of the minor upon arrival in the United States.” Div. L, Sec. 103(a)(2)(F)(i). About sixty percent of unaccompanied minors do not have parents or legal guardians living in the U.S.

Finally, the Secure Border Act requires the immediate deportation of any Central American minor unless the minor is the victim of human trafficking. Div. L, Section 108(D)(i).

The United States is bound by the terms of the 1967 United Nations Protocol Relating to the Status of Refugees. The Protocol prohibits the deportation of any person, including minors, to countries where they face persecution. The Constitution, Article VI, clause 2, provides, “all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land ...” By denying Central American minors the right to seek and be granted asylum in the United States, the Secure Border Act clearly violates the supreme law of the land.

Minors fleeing persecution usually flee their countries rapidly. They cannot safely wait for several months or years to process applications while their lives are at risk. Nor do most minors facing persecution have the funds that will be needed for fees the U.S. will impose to “deter frivolous applications.” Nor do most minors facing persecution have a “qualified parent or guardian [living] in the United States.” These draconian restrictions will encourage minors to attempt entry into the United States without inspection. If successful, these restrictions will result in the abuse, torture, and death of innocent children.

Over the past year immigrant children have increasingly become targets of the Administration’s anti-immigrant campaign. Thousands of children have been forcibly separated from their parents (many still not reunited with their mothers and fathers), thousands have been held in cages (the children call them “dog cages”), at least two minors in U.S. custody recently died, and the number of detained unaccompanied minors has skyrocketed to 15,000, not because of a new influx but because the Administration now unreasonably delays releasing them to parents or relatives living in the U.S. Among other tactics that delay and prevent the release of detained children, the ORR informs parents and relatives seeking children's release that they will be turned over to ICE for possible arrest and deportation.

*We urge the House and Senate negotiators concerned with the humane treatment of children to insure that the spending bill negotiated in the coming weeks prohibits funds being used to (1) forcibly separate children from their parents, (2) terminate the Flores settlement, or (3) deny asylum to any child who possesses a valid claim under U.S. law and the United Nations Protocol Relating to the Status of Refugees.*

///