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CLINIC Transition Paper: Restoring Protections for Immigrant Children and Youth

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The Catholic Legal Immigration Network, Inc., CLINIC, promotes the dignity and protects the rights of immigrants in partnership with our network of immigration legal services providers. Visit us at cliniclegal.org/transition.

“[F]rom the way children are treated society can be judged. . . .”¹

“A society which abandons children and the elderly severs its roots and darkens its future.”²

“Some things we really need to take care of: the children, and grandparents. Children, whether young or older, they are the future, the strength that moves us forward. We place our hope in them.”³

– Pope Francis

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Why the United States' fair treatment of immigrant children and youth matters

The United States' treatment of vulnerable populations like immigrant children sends a message to the world about who we are as a society. Catholic Social Teaching recognizes the inherent dignity and worth of every person and teaches that we have a moral obligation to treat vulnerable populations, such as immigrant children, with particular care. The U.S. Conference of Catholic Bishops states:

"If there ever was a vulnerable person, a migrant child who is traveling alone would certainly seem to fit that definition. To turn our back on these populations, to demonize them, and to treat them as outcasts and unwelcome directly contravenes our obligation to approach vulnerable populations with particular care."⁴

U.S. policy towards immigrant children has serious and defining foreign policy implications. A humane and compassionate approach is essential for the United States to have credibility and set a global example on human rights.

Number of people impacted

Migration Policy Institute, or MPI, data shows that, as of June 2020, there were over 645,000 DACA recipients.⁵ MPI estimates that as of June 2020 the immediately eligible population is over 1.3 million.⁶ Recent data from the Center for American Progress shows that nearly 254,000 U.S.-born children have at least one parent who is a DACA recipient.⁷

The Office of Refugee Resettlement, or ORR, is responsible for the custody and care of unaccompanied immigrant children. Their data shows that ORR referred over 34,953 unaccompanied children to sponsors in Fiscal Year 2018, 72,837 in Fiscal Year 2019, and 16,837 in Fiscal Year 2020.⁸

Previous administration's policy and the human consequences

While U.S. immigration policy toward children has never been perfect, before President Trump took office the U.S. government had made progress in recognizing that immigration children must be shown particular care and in working toward our moral obligation as a society to protect and humanely care for them.⁹

From the onset of Trump's presidency, his administration has sponsored a policy of extreme cruelty toward immigrant children, ignoring our moral obligations and defying legal protections for immigrant children, referring to those protections as "legal loopholes" that unaccompanied children "exploit."¹⁰ The Trump administration has consistently used dehumanizing rhetoric to talk about immigrant children, vilifying them in terms such as "wolves in sheep clothing."¹¹ This harmful rhetoric accompanies a multitude of policies that harm

immigrant children, such as forcibly separating children from their parents, revoking the DACA program, terminating the Central American Minors program, detaining children for prolonged periods in unlicensed and unsafe facilities, and expelling unaccompanied children at the border instead of following the laws designed to protect them.

The Biden administration should take immediate steps to undo this damage and expand protections for immigrant children and youth. These steps are necessary to meet our moral obligation, comply with the law and basic fairness, restore the United States as a leader in human rights on the world stage, and allow immigrant children to meet their full potential.

In order to restore protections to immigrant children and youth and facilitate their ability to flourish, the Biden administration should do the following in the first 100 days:

Recommendation 1

Reinstate the DACA program and support legislation providing a pathway to citizenship

The DACA program provided life-changing protection from removal and work authorization to nearly 800,000 immigrant youth who came to the United States as children and who exemplify the promise of the American Dream.¹² The Trump administration's efforts to end the program and pursue removal of DACA recipients are failures to recognize the dignity and promise of these young people. CLINIC urges the Biden administration to fully reinstate the original DACA program, consistent with its campaign promise.¹³ This action would benefit not only the nearly 800,000 youth who were previously granted DACA but also hundreds of thousands more who have "aged in" to eligibility to apply.¹⁴ The Biden administration should also direct the DHS Secretary to issue a memo to ICE prosecutors instructing them to agree to postponements of DACA-eligible youth's immigration court proceedings and to join motions to dismiss removal proceedings of DACA recipients. In addition to these immediate measures, CLINIC wholeheartedly supports the Biden administration's promise to work with Congress to provide a pathway to citizenship.

Recommendation 2

Halt forthcoming final regulations on Special Immigrant Juvenile Status and restart the rulemaking process to align the regulations with Congress's intent to protect abused, abandoned and neglected children

Special Immigrant Juvenile Status, or SIJS, provides a pathway to permanency for abused, neglected and abandoned children whom a juvenile court has determined should remain in the United States in keeping with their best interest. Consistent with the animus toward immigrant children the Trump administration has repeatedly demonstrated, the administration moved to promulgate final regulations that would restrict SIJS in a manner that thwarts congressional intent.¹⁵ The Biden administration should halt the Trump administration's forthcoming final regulations and stop them from going into effect.¹⁶ The administration should then start over in drafting proposed rules that incorporate stakeholder comments from 2011 and 2019,¹⁷ and open a 60-day comment period on new proposed regulations that are consistent with Congress's purpose to provide broad protections to this vulnerable group of children.

Recommendation 3

Stop pursuing removal of SIJS-seeking children

Under the Trump administration, ICE prosecutors routinely seek removal orders against SIJS-eligible children, and even argue for removal of children who have been granted SIJS and are waiting for a visa number to become available so that they can apply to adjust their status to lawful permanent resident.¹⁸ This practice — of seeking removal of SIJS beneficiaries who are waiting to adjust their status — defies Congress's intent to protect this vulnerable group of children from removal and allow them to remain safely in the United States until they can adjust status. The Biden administration should direct the DHS Secretary to issue a memo to ICE prosecutors instructing them to agree to postponements or termination of SIJS-eligible youth's immigration court proceedings and to join motions to dismiss removal proceedings for respondents with approved SIJS petitions who are awaiting the chance to adjust status. The Biden administration should also implement a policy providing deferred action — and attendant eligibility for work authorization — to youth with approved SIJS petitions, to remain in effect until they are able to adjust status, in light of the visa backlog. These measures would promote safety and stability for SIJS-eligible children while they undergo the process Congress provided for them to access permanent residency.

Recommendation 4

End the unnecessary detention of children

The Trump administration has ramped up the prolonged detention of children, both through the use of unlicensed family detention centers and through various types of detention facilities for unaccompanied children, including in large unlicensed "influx" facilities.¹⁹ Detention of children has profound long-term negative effects on their well-being and is morally reprehensible.²⁰ The Biden administration should follow a policy whereby detention of children — whether unaccompanied or with their families — is the rare and time-limited exception and swift release is favored. CLINIC supports the Biden campaign document's pledge to "codify protections to safeguard children to make sure their treatment is consistent with their best interest and invest in community-based case management programs, including those supported by faith-based organizations such as Lutheran Immigration and Refugee Services, to move migrants into safe environments as quickly as possible."²¹ These actions would be steps in the right direction toward ensuring the best interest of immigrant children and establishing conditions enabling them to thrive.

Recommendation 5

End section 42 expulsions and respect the rights of unaccompanied children enshrined in the Trafficking Victims Protection Reauthorization Act

In March of 2020, the Centers for Disease Control and Prevention issued an order suspending the entry of certain immigrants — including many asylum seekers and unaccompanied children — into the United States, purportedly for public health reasons.²² The CDC was ordered against its objections to issue this directive,²³ even though public health experts have called on the U.S. government to withdraw it as lacking a public health basis and “overriding humanitarian laws and treaties that provide life-saving protections to refugees seeking asylum and unaccompanied children” under the pretext of public health.²⁴ The CDC order has resulted in the expulsion of thousands of unaccompanied children,²⁵ depriving them of the protections they are entitled to by statute — which include prompt transfer to ORR custody and placement in full removal proceedings before an immigration judge where they can seek humanitarian relief — and sending them back to danger contrary to their best interests.²⁶ The Biden administration should immediately rescind the CDC order and respect the protections the Trafficking Victims Protection Reauthorization Act affords unaccompanied children.²⁷

Recommendation 6

Restore and Expand the Central American Minors Program

In 2017, the Trump administration revoked the Central American Minors, or CAM, Program, an Obama-era initiative that provided in-country screening and processing of Central American children seeking protection and a mechanism for reuniting them with parents already lawfully residing in the United States.²⁸ As promised in its campaign document,²⁹ the Biden administration should restore the CAM program, and should expand it to allow a broader group of U.S.-residing family members to apply for minor children abroad. Restoring the CAM program will promote the safety and well-being of children stuck in dangerous conditions abroad, and allow them to safely reunite with caregivers already residing in the United States.

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Endnotes:

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- ¹ Pope Francis, General Audience, Saint Peter's Square (Mar. 18, 2015), http://www.vatican.va/content/francesco/en/audiences/2015/documents/papa-francesco_20150318_udienza-generale.html.
- ² Pope Francis (@Pontifex), TWITTER (May 6, 2014, 6:00 AM), <https://twitter.com/pontifex/status/463619404253507584?lang=en>.
- ³ Pope Francis, Remarks at the Festival of Families in Philadelphia (Sept. 26, 2015), <https://straymonds.org/twenty-seventh-sunday-in-ordinary-time-3/>.
- ⁴ U.S. Conference of Catholic Bishops, *Unaccompanied Migrant Children Understood Through a Catholic Social Teaching Context*, at 2 (July 2014), <https://www.usccb.org/about/migration-policy/upload/Catholic-Social-Teaching-and-Unaccompanied-Migrant-Children.pdf>.
- ⁵ Migration Policy Institute, *Deferred Action for Childhood Arrivals (DACA) Data Tools*, <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last visited Jan. 7, 2021).
- ⁶ *Id.*
- ⁷ Center for American Progress, *What We Know About the Demographic and Economic Impacts of DACA Recipients: Spring 2020 Edition* (Apr. 6, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482676/know-demographic-economic-impacts-daca-recipients-spring-2020-edition/>.
- ⁸ U.S. Department of Health and Human Services Office of Refugee Resettlement, *Unaccompanied Alien Children Released to Sponsors by State* (last reviewed Dec. 31, 2020), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-alien-children-released-sponsors-state>. These figures do not reflect the total number of unaccompanied children affected by U.S. policy as they do not include, for example, those unaccompanied children whom DHS summarily expels at the border or who otherwise never make it to ORR custody, or those whom ORR does not release to a sponsor.
- ⁹ See, e.g., Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044, Flores Settlement Agreement, *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997), https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf.
- ¹⁰ Press Release, Department of Homeland Security, *Unaccompanied Alien Children and Family Units Are Flooding the Border Because of Catch and Release Loopholes* (Feb. 15, 2018), <https://www.dhs.gov/news/2018/02/15/unaccompanied-alien-children-and-family-units-are-flooding-border-because-catch-and>.
- ¹¹ Josh Delk, *Sessions: Some Undocumented Minors Are "Wolves in Sheep Clothing,"* THE HILL (Sept. 21, 2017, 10:37 PM), <https://thehill.com/blogs/blog-briefing-room/351852-sessions-some-undocumented-minors-are-wolves-in-sheeps-clothing>.
- ¹² USCIS, *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017* (June 2017), https://www.uscis.gov/sites/default/files/document/data/daca_performancedata_fy2017_qtr3.pdf.
- ¹³ *The Biden Plan for Securing Our Values as a Nation of Immigrants*, JOEBIDEN.COM, <https://joebiden.com/immigration/> (last visited Jan. 7, 2021). While a December 2020 federal court order currently requires USCIS to process DACA applications based on the terms of the policy in effect before President Trump rescinded the program in 2017, the agency's website states that "DHS may seek relief from the order." USCIS, *Update: Deferred Action for Childhood Arrivals* (last updated Dec. 9, 2020), <https://www.uscis.gov/news/alerts/deferred-action-for-childhood-arrivals-response-to-december-4-2020-order-in-batalla-vidal-et-al-v>.
- ¹⁴ See Migration Policy Institute, *Deferred Action for Childhood Arrivals (DACA) Data Tools*, <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last visited Jan. 7, 2021).

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- ¹⁵ Press Release, USCIS Clarifies Special Immigrant Juvenile Classification to Better Ensure Victims of Abuse, Neglect and Abandonment Receive Protection (Oct. 15, 2019), <https://www.uscis.gov/news/uscis-clarifies-special-immigrant-juvenile-classification-better-ensure-victims-abuse-neglect-and-abandonment-receive-protection>; see CLINIC Submits Comments on Special Immigrant Juvenile Status Petitions Proposed Regulations (Nov. 2019), <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-submits-comments-special-immigrant-juvenile>; CLINIC & Immigrant Legal Resource Center, Practice Alert: SIJS Policy Updates and Proposed Regulations (Nov. 2019), <https://cliniclegal.org/resources/childrens-issues/special-immigrant-juvenile-status/practice-alert-special-immigration>.
- ¹⁶ As of the date of this policy paper, the final regulations have not yet been issued. See Office of Information & Regulatory Affairs, Office of Management & Budget, <https://www.reginfo.gov/public/do/eoDetails?rrid=131233> (RIN 1615-AB81) (last visited Jan. 7, 2021).
- ¹⁷ Special Immigrant Juvenile Petitions, Docket ID: USCIS-2009-0004, [regulations.gov](https://www.regulations.gov).
- ¹⁸ Cf. *Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153, 173 (3d Cir. 2018) (“[DHS] apparently has not, until recently, sought even standard removal, much less expedited removal, of SIJ designees while their applications for adjustment of status were pending. . .”).
- ¹⁹ See Anna Flagg & Andrew R. Calderon, *500,000 Kids, 30 Million Hours: Trump’s Vast Expansion of Child Detention*, THE MARSHALL PROJECT (Oct. 30, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/10/30/500-000-kids-30-million-hours-trump-s-vast-expansion-of-child-detention>.
- ²⁰ See, e.g., Harvard University Center on the Developing Child, Separation and Detention of Migrant Children and Families, <https://developingchild.harvard.edu/about/press/media-coverage/separation-detention-migrant-children/> (last visited Jan. 7, 2021).
- ²¹ *The Biden Plan for Securing Our Values as a Nation of Immigrants*, JOEBIDEN.COM, <https://joebiden.com/immigration/> (last visited Jan. 7, 2021).
- ²² Centers for Disease Control and Prevention, Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17060 (March 26, 2020).
- ²³ Jason Dearen & Garance Burke, *Pence Ordered Borders Closed After CDC Experts Refused*, AP (Oct. 3, 2020), <https://apnews.com/article/virus-outbreak-pandemics-public-health-new-york-health-4ef0c6c5263815a26f8aa17f6ea490ae>.
- ²⁴ Priscilla Alvarez, *Health Experts Slam Trump Administration’s Use of Public Health Law to Close Border*, CNN (May 18, 2020, 12:23 PM), <https://www.cnn.com/2020/05/18/politics/border-closure-public-health/index.html>.
- ²⁵ See, e.g., Caitlin Dickerson, *U.S. Expels Migrant Children from Other Countries to Mexico*, updated Nov. 3, 2020, N.Y. TIMES, <https://www.nytimes.com/2020/10/30/us/migrant-children-expulsions-mexico.html>.
- ²⁶ TVPRA of 2008, Pub. L. No. 110-457, 122 Stat. 5044, codified at, *inter alia*, 8 U.S.C. § 1232.
- ²⁷ On Nov. 18, 2020, the U.S. District Court for the District of Columbia issued a preliminary injunction preventing DHS from expelling unaccompanied children from the United States under the CDC order. Order, *P.J.E.S. v. Wolf*, ECF No. 79, 20-cv-02245-EGS-GMH (D.D.C. Nov. 18, 2020). The government has appealed the preliminary injunction. *P.J.E.S. v. Wolf*, No. 20-5357 (D.C. Cir., appeal filed Nov. 30, 2020). For recommendations specific to asylum procedures for unaccompanied children, see recommendation #6 of CLINIC’s transition paper titled “Restoring the United States’ Commitment to Asylum,” available at <https://cliniclegal.org/sites/default/files/2020-12/CLINIC%20Transition%20Paper-Restoring%20the%20United%20States%20Commitment%20to%20Asylum.2020.12.pdf>.
- ²⁸ See USCIS, In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors – CAM), <https://www.uscis.gov/CAM> (last visited Jan. 7, 2021).
- ²⁹ *The Biden Plan for Securing Our Values as a Nation of Immigrants*, JOEBIDEN.COM, <https://joebiden.com/immigration/> (last visited Jan. 7, 2021).