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INTRODUCTORY NOTE TO RESOLUTION 1106 (2168/18) (OAS), PRECAUTIONARY MEASURE NO. 731–18, & PRECAUTIONARY MEASURE NO. 505-18 (IACHR)

BY BERTA ESPERANZA HERNÁNDEZ-TRUYOL*

[June 29, 2018] [August 16, 2018]

Introduction

In the spring of 2018, the White House and executive agencies issued a series of orders aimed at more aggressive enforcement against irregular entry of migrants at the southwest border. In analyzing the legal validity of the new U.S. immigration policy decisions, the Inter-American System questioned and strongly condemned the U.S. policy and practice of separating migrant families. On June 29, 2018, the Permanent Council of the Organization of American States (OAS) issued a resolution[1] that rejected any migration policy that resulted in the separation of families. Specifically, it urged the U.S. government to implement measures to avoid the separation of families, to seek unification of children and parents already separated, and to promote the identification of migrants and refugee seekers in accordance with international law. After the issuance of the resolution, the Inter-American Commission on Human Rights (IACHR) granted Precautionary Measure No. 731–18,[2] Regarding Migrant Children Affected by the "Zero Tolerance" Policy Regarding the United States of America (the children's measure), and Precautionary Measure No. 505–18,[3] Concerning Vilma Aracely López Juc de Coc and Others Regarding the United States of America (the parents' measure), both of which recognized that the rights to family life and personal integrity were at risk.

Background

The U.S. implementation of draconian policies in policing migrant entries at its southwest border triggered the involvement of the OAS Permanent Council and the IACHR. On April 6, 2018, Jefferson Sessions, the U.S. attorney general, directed federal prosecutors along the southwest border to adopt a "zero-tolerance policy" for improper-entry, immigration-related offenses.[4] Simultaneous with the attorney general's policy announcement, the White House issued a presidential memorandum on the subject of "Ending 'Catch and Release' at the Border of the United States and Directing Other Enhancements to Immigration Enforcement."[5] The memorandum limited prosecutorial discretion by calling for an end to "catch and release," the term used for the exercise of prosecutorial discretion in determining which migrants to release from custody and which to detain. Children, families, individuals who belong to a vulnerable demographic, and individuals who state that they have a credible fear of violence or persecution if they are returned to their country of origin, have historically been allowed to remain in the country undocumented while awaiting immigration hearings.[6]

The next policy change took effect on May 7, 2018, when the U.S. Department of Justice (DOJ) further strengthened its new immigration control policy by implementing a "zero-tolerance illegal immigration control strategy" at the U.S.-Mexico border. The DOJ's zero-tolerance strategy resulted in the detention of all adults awaiting federal prosecution for undocumented entry and the subsequent removal of their children to separate child facilities across the United States.[7]

In response to the political and media backlash that followed tightening of the migration policy, President Trump issued Executive Order 13841 on June 20, 2018, which called on Congress to issue guidance or enact legislation addressing immigration.[8] Following the executive order, the DOJ filed an ex parte application in the U.S. District Court for the Central District of California requesting modification of the 1997 *Flores* Settlement Agreement (*Flores* Agreement). The *Flores* Agreement places limits on the time and conditions of children's incarceration in immigration detention. Specifically, the *Flores* Agreement provides that within three to five days of being apprehended, children must be transferred to a nonsecure, state-licensed facility.[9] The DOJ's ex parte application sought an exemption from the *Flores* Agreement's release provisions so that minors who arrived with their parents or legal guardians could be held together in Immigration and Customs Enforcement (ICE) detention and so that the *Flores* Agreement's state licensure requirement would not apply to ICE family residential facilities.[10]

The DOJ's rationale for requesting an exemption from *Flores* Agreement requirements was that children were being separated from their parents because of the practical unavailability of family detention centers that comply with

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Flores requirements.[11] Because DOJ's prosecutorial discretion is severely limited under the "zero-tolerance" policy, the practice of releasing parents with children ceased for the period between May 7 and June 20. The DOJ decried the practice of releasing families as a "a powerful incentive for aliens to enter this country with children in violation of our criminal and immigration laws and without a valid claim to be admitted to the United States."[12] The practical effect of the zero-tolerance policy was that children were separated from their parents and moved to detention centers that met *Flores* Agreement requirements. However, the moves violated children's right to family life, violated their right to personal integrity, and an constituted an affront to the principle of nonrefoulement as recognized in international refugee law and customary international law. On July 6, the district court denied the DOJ's application, stating that it was "a cynical attempt, on an *ex parte* basis, to shift responsibility to the Judiciary for over 20 years of Congressional inaction and ill-considered Executive action that have led to the current stalemate . . . . [W]hat is certain is that the children who are the beneficiaries of the Flores Agreement's protections and who are now in Defendants' custody are blameless."[13]

During the same period, the U.S. District Court for the Southern District of California issued a preliminary injunction that prohibited the government from detaining *Flores* class members[14] in Department of Homeland Security (DHS) custody separated from their minor children. The court further ordered the government to reunite class members with their children, absent a determination that one of two conditions were met: (a) that the parent was unfit or presented a danger to the child, or (b) that the parent affirmatively, knowingly, and voluntarily declined to be reunified with the child.[15] The court created two deadlines for the Trump administration to meet its reunification process, the later one falling on July 26, 2018.[16]

By the time of the IACHR's August decisions underscoring that the rights to family life and personal integrity were at risk with the U.S. policies, the United States reported having made efforts toward reunifying the 2,551 children initially identified as having been separated from their families. By then, the time limits set out in the *Ms. L* decision had expired.[17] Moreover, the United States also reported that 572 separated children would still remain in the custody of the Office of Refugee Relocation.

As of September 2018, DHS and the Department of Health and Human Services had proposed to amend regulations relating to the apprehension, processing, care, custody, and release of undocumented juveniles in a move that will constructively erase *Flores* Agreement conditions regarding the duration of detention and security level and licensing requirements of detention facilities for minors. If implemented, these proposed regulations will create an alternative federal licensing system for family detention centers, effectively creating a situation in which accompanied minors will remain with their families in adult detention indefinitely.[18] The proposed regulations do not anticipate a change in policies on the detention, apprehension, or transportation of unaccompanied minors.[19]

The IACHR's Decision

After the U.S. announcement of the immigration policy changes, the OAS Permanent Council issued Resolution 1106,[20] noting the extensive protections of migrants that exist in the Inter-American System, expressing concern about the new U.S. zero-tolerance policy at the southwestern border and its impact on children who are being detained and separated from their families, emphasizing that the best interest of the child is paramount, affirming the human rights of "persons to seek and receive asylum," and "forcefully" rejecting any U.S. migration policy that results in separation of families as a human rights violation. Indeed, the resolution underscores that the only permissible instance of a family separation is when it is in the best interests of the child. Following the resolution, the IACHR issued both the children's precautionary measure and the parents' precautionary measure, making it the first time that the IACHR has recognized separated migrant families as a protected category under Article 25.

The IACHR's children's measure recognized the 572 children still remaining in custody as a class of persons under Article 25.3.[21] This application of Article 25 allowed for issuing precautionary measures though such children are not persons previously designated as a class under international law. The IACHR found in both the children's and parents' measures that the separation of families met the prima facie requirements for seriousness, urgency, and risk of irreparable harm as set forth in Article 25 of its Rules of Procedure. Moreover, the IACHR concluded that the rights to identity, family life, and personal integrity were directly at risk.[22]

The IACHR urged the United States to adopt the necessary measures to protect the established human rights to a family life, personal integrity, and identity of the proposed beneficiaries. Further, the IACHR urged the United

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States to adopt the necessary measures while reunification is carried out (a) immediately to guarantee regular communication between the beneficiaries and their families, and (b) immediately to adopt the necessary measures in the framework of international cooperation to guarantee their reunification. Finally, the IACHR urged the United States to suspend any migration procedure that may result in the separation of the children from their parents.[23]

Conclusion

These legal analyses of the new U.S. migration policies emphasize the complementary nature of the Inter-American system. Both the IACHR and the domestic courts forcefully rejected the Trump Administration's draconian immigration policies as potentially causing irreparable harm and violating human rights. The decisions of the U.S. domestic courts recognize the state's obligations under international law. The IACHR's decisions reflected a reciprocal recognition of the state's sovereign authority regarding immigration and asylum policies but stressed the supremacy of human rights over national policy and the U.S. obligation to observe the principle of nonrefoulement under international law. The responsibility of the United States to protect the human rights of all persons under its jurisdiction was a central factor in both the domestic decisions and the decisions of the IACHR. In this sense the provisional and precautionary measures adopted by the IACHR and the injunctions issued by the domestic courts serve as examples of the guarantees of protection of human rights within the Inter-American System and create important precedent as the challenges of human migration become more pressing.

ENDNOTES

1 OEA, P.C. Res. 1106 (2168/18), Impact on the Human Rights of Migrants of the Policy of the Government of the United States of America of Separating Migrant Families (June 29, 2018).

2 Migrant Children Affected by the "Zero Tolerance" Policy Regarding the United States of America, Inter-Am. Comm'n H. R., 64/2018, Precautionary Measure No. 731-18, OEA (Aug. 16, 2018) [hereinafter Precautionary Measure No. 731-18].

3 Vilma Aracely López Juc de Coc and Others Regarding the United States of America, Inter-Am. Comm'n H.R., 63/2018, Precautionary Measure No. 505-18, OEA (Aug. 16, 2018) [hereinafter Precautionary Measure No. 515-18].

4 WILLIAM A. KANDEL, CONG. RESEARCH SERV., R45266, THE TRUMP ADMINISTRATION'S "ZERO TOLERANCE" IMMIGRATION POLICY 7 (2018).

5 Ending "Catch and Release" at the Border of the United States and Directing Other Enhancements to Immigration Enforcement, 83 FR 16179 (Apr. 6, 2018).

6 *Id.*

7 KANDEL, *supra* note 4, at 2.

8 Exec. Order No. 13841, 83 Fed. Reg. 29435.

9 Stipulated Settlement Agreement at 3–4, Flores v. Reno, 507 U.S. 292 (1993), CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).

10 Defendant's Memorandum of Points and Authorities in Support of *Ex Parte* Application for Relief from the Flores Settlement Agreement at 4, Flores v. Sessions, 2018 U.S. Dist. LEXIS 115488, CV 85-4544-DMG (C.D. Cal. June 21, 2018).

11 Defendant's Memorandum at 1, Flores v. Sessions, 2018 U.S. Dist. LEXIS 115488 (2018), CV 85-4544-DMG.

12 *Id.*

13 Order Denying Defendant's Ex Parte Application for Limited Relief from Settlement Agreement at 7, Flores v. Sessions, 2018 U.S. Dist. LEXIS 115488 (C.D. Cal. July 9, 2018).

14 L. v. United States Immigration & Customs Enf't ("ICE"), 310 F.Supp.3d 1133, at 1137; U.S. Dist. LEXIS 97993 (S.D. Cal. 2018) (certifying as a class the migrant parents who stated a legally cognizable claim for "violation of their substantive due process rights to family integrity under the Fifth Amendment to the United States Constitution based on their allegations that the Government had separated Plaintiffs from their minor children while Plaintiffs were held in immigration detention and without a showing that they were unfit parents or otherwise presented a danger to their children").

15 *L.*, 310 F.Supp.3d at 1149.

16 *Id.*

17 Precautionary Measure No. 505-18, *supra* note 3.

18 Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 83 Fed. Reg. 174, 45488 (Sep. 7, 2018).

19 *Id.* at 45489.

20 OEA, P.C. Res. 1106 (2168/18).

21 Organization of American States, Rules of Procedure of the Inter-American Commission on Human Rights art. 25, Aug. 1, 2013. "3. Precautionary measures may protect persons or groups of persons, as long as the beneficiary or beneficiaries may be determined or determinable through their geographic location or membership in or association with a group, people, community or organization."

22 Precautionary Measure No. 731-18, *supra* note 2.

23 *Id.*

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RESOLUTION 1106 (2168/18) (OAS)*
[June 29, 2018]

PERMANENT COUNCIL

OEA/Ser.G
CP/RES. 1106 (2168/18) rev. 1
6 July 2018
Original: Spanish

CP/RES. 1106 (2168/18)

IMPACT ON THE HUMAN RIGHTS OF MIGRANTS OF THE POLICY OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF SEPARATING MIGRANT FAMILIES[1,2]

(Adopted by the Permanent Council at its regular meeting held on June 29, 2018)

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

NOTING WITH CONCERN the zero tolerance migration policy implemented by the Government of the United States of America and its impact on children and adolescents who under that policy have been detained and separated from their families when entering that country from its southern border;

TAKING NOTE OF:

The resolution "Migration in the Americas," adopted by the OAS General Assembly at its forty-seventh regular session;

The annual reports of the Inter-American Commission on Human Rights (IACHR), as well as its thematic reports in this area, including the report "Human Mobility: Inter-American Standards," and Advisory Opinions OC-16/99 (1999), OC-18/03 (2003), and OC-21/14 (2014) of the Inter-American Court of Human Rights;[3]

The Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families, adopted by resolution AG/RES. 2883 (XLVI-O/16);

The declarations adopted by the Permanent Council CP/DEC. 68 (2099/16), "Inter-American Cooperation to Address the Challenges and Opportunities of Migrants," of December 15, 2016, and CP/DEC. 54 (1979/14), "Central American Unaccompanied Child Migrants," of July 23, 2014;

The press release of the Inter-American Commission on Human Rights of June 18, 2018, expressing its concern over the recent migration and asylum policies and measures implemented by the Government of the United States of America;

REAFFIRMING that the States, in exercising their sovereign right to enact and apply measures on migration and the security of their borders, must comply with the obligations incumbent upon them under international law to ensure full respect for the human rights of migrants;

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RECOGNIZING the importance of promoting actions for the protection of the human rights and fundamental freedoms of children and adolescents – accompanied and unaccompanied – in the context of international migration, as well as those of vulnerable migrants;

REAFFIRMING:

That the higher interest of the child must take precedence over all normative and public policy measures adopted by the States, including migration policies, and

The right of all persons to seek and receive asylum or refuge,

RESOLVES:

1. To express forcefully its rejection of any migration policy that leads to the separation of families, since this leads to practice that violates human rights, especially those of children and adolescents.

2. To urge the Government of the United States to implement recently announced measures intended to avoid the separation of families and to take necessary steps to seek to unify children and parents, as quickly as possible.

3. To urge the Government of the United States to promote the identification of migrants and seekers of refugee status who require international protection and to apply the principle of non-refoulement to persons whose life and liberty may be threatened or at risk, in accordance with international law.

4. To encourage the Inter-American Commission on Human Rights to conduct an on-site visit to the southern border of the United States to observe the consequences of the migration, refugee, and asylum policies implemented by the United States and to implement, in the framework of its authorities, any measures it deems relevant, including possible adoption of precautionary measures, and to request that the IACHR report to the Permanent Council on the results of that visit and the measures taken.

5. To keep this matter on the agenda of the Permanent Council for the purpose of periodic follow-up.

FOOTNOTES

1. . . . obligations under the 1967 Protocol relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The United States understands the reference to the right to seek and receive asylum to refer to the right enshrined in Article XXVII of the American Declaration on the Rights and Duties of Man, including its reference to "in accordance with the laws of each country and with international agreements."

The United States underscores its understanding that none of the provisions in this resolution create or affect rights or obligations of States under international law. We do not understand the resolutions adopted by the OASGA, or this resolution of the Council, to imply that States must join human rights or other international instruments to which they are not a party, or that they must implement those instruments or any obligations under them.

Among other things, this understanding applies to references to the principle of the best interests of the child, a common principle of U.S. law and the law of many states, and which is found in the Convention on the Rights of the Child, to which the United States is not a party. In any event, that Convention provides that "in all actions concerning children, . . . the best interests of the child shall be a primary consideration." This resolution incorrectly implies that even for parties to that Convention, best interests of the child always take precedence over all other considerations. As a matter of international law and under the domestic laws of many States, it is simply not true that all other considerations are always subordinate, a fact implicit in the careful wording of Article 3 of the Convention.

Finally, the United States' position on this resolution is reflected in the intervention made by the U.S. Permanent Representative during consideration of the draft resolution at the Permanent Council on June 29, 2018, and included in the minutes of said meeting.

2. . . . several weeks he observed that they gradually lost their physical abilities (they did not eat, lost body weight, and were unable to sleep), lost their social skills (frequent crying, lack of interest in their surroundings,

no play), and even their linguistic skills declined: they simply stopped talking. The children that Spitz studied entered a regressive phase in their development that quickly turned into a deep depression that, if not treated on time, affected them irreversibly.

Dr. Spitz is considered one of the founders of the science of child development. All the scientific studies conducted since 1935 have corroborated the long-term repercussions on children of denying them their mothers' love.

What we never could have imagined is that after so much scientific evidence, the government of President Trump would decide by decree—and not by error—to make thousands of children pay that horrendous cost to their physical and emotional health. Separating these children from their mothers is a cruel, inhumane, and immoral decision but, above all, it technically constitutes a crime, in that thousands of children are being deliberately subjected to deprivations that have the same effects as torture. The facts established by science are irrefutable.

The policy of separating children from their parents is an abomination, a universal disgrace, but worst of all is the fact that its authors defend it by citing verses from the Bible. Such arrogance is intolerable.

The day before yesterday we heard Vice President Pence in Brazil quoting scripture about "doing justice, loving good" in Venezuela and, yesterday, we saw him threatening the Presidents of Central America, calling them a danger to his national security.

This immense moral blindness is the result of a ethnocentric, nationalist, and supremacist ideology that holds Latin Americans to be inferior.

That, across the world, has a name, and it is called racism.

In its 2018 budget, the United States Congress justifies the money it gives to the OAS in the following terms:

> *"The OAS promotes the political and economic interests of the United States in the Western Hemisphere and counteracts the influence of countries such as Venezuela."*

We must acknowledge that the function of this Organization has never been described better. That explains why, after a year and a half of insults, humiliations, and threats from President Trump toward the peoples of Latin American, there has never been a special meeting of the Permanent Council to examine those racist, bellicose attacks. That explains the silence of the Secretary General, who merely adheres timidly to a statement by the IACHR while being so unrestrained on other topics.

It is the enormous corrosive influence of President Trump's power that explains why the IACHR is so active toward so many countries and so passive toward the United States. The IACHR's last report on human rights in the United States was published in 1962, 56 years ago. Today, faced with the cruelest of policies, degrading acts, and the harmful treatment of thousands of vulnerable Latin American children, the IACHR merely dares to express "its concern."

For all those reasons, we are unable to support the resolution presented today. It is an overdue and inadequate resolution that disregards the demonstrated inability of the organs of the OAS to denounce mass violations of human rights in our Hemisphere simply because they are unable to break the chains that bind them in submission to the Government of the United States. We should not delude ourselves.

We maintain our hope that in a not-so-distant future, the indignation of the Hemisphere—and that of the great nation that the United States itself is—will overcome the ideologies of hate that are today taking the most vulnerable as hostages in order to impose their unacceptable vision of the world.

ENDNOTES

1 The United States reaffirms that member states should seek to safeguard individuals who are entitled to international protection. Further, the United States intends to continue to respect its non-refoulement . . .

2 Footnote from the Bolivarian Republic of Venezuela: In 1935, Dr. René Spitz conducted the first systematic and methodical studies on the effect of separating children from their mothers. After . . .

3 The State of Chile wishes to make clear its position that the advisory opinions of the Inter-American Court of Human Rights cited in this resolution are done so purely for reference purposes.

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PRECAUTIONARY MEASURE NO. 731–18 (IACHR)*
[August 16, 2018]

IACHR Inter-American Commission on Human Rights

OAS More rights for more people

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLUTION 64/2018

Precautionary Measure No. 731–18
Migrant Children affected by the "Zero Tolerance" Policy regarding the
United States of America
August 16, 2018

I. INTRODUCTION

1. On June 18, 2018, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a request for precautionary measures presented by the National Commission of Human Rights of Mexico, the Ombudsman's Office of Colombia, the Ombudsman's Office of Ecuador, the Attorney General's Office of Guatemala, the National Commissioner of Human Rights of El Salvador, the National Commissioner of Human Rights of Honduras, all of which are National Institutions of Human Rights ("the applicants"), in favor of migrant children that had been detained and separated from their families in the United States as a result of the implementation of the "Zero Tolerance" policy ("the beneficiaries"). Among other conditions, the applicants allege that the separation of parents from their children could cause irreparable harm to their rights, particularly in the context of the children's best interest.

2. The Commission requested information from both parties on June 25, 2018 and received information from the applicants on June 28, July 4 and 6, and August 1, 2018. The State sent its report on June 29, 2018. On July 20, the Commission requested additional information from both parties. The applicants submitted their response on August 6, 2018. For its part, the State submitted its report on August 10, 2018.

3. After analyzing the factual and legal allegations submitted by the parties, the Commission concludes that the rights to family life and personal integrity, as well as the right to identity of the children, who are the proposed beneficiaries, are *prima facie* in a situation of risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the United States: a) Adopt the necessary measures to protect the rights to a family life, personal integrity, and identity of the proposed beneficiaries. Particularly, assuring that these rights are protected through the reunification of the children with their biological families and in support of the children's best interests; b) Adopt the necessary measures, while the reunification is carried out, to immediately guarantee an appropriate, free, and regular communication between the beneficiaries and their families, in accordance with their best interests. Moreover, with the aim of protecting their rights, provide medical and psychological assistance, among others that might be necessary such as consular assistance. Also, provide interpreting services when necessary so that the proposed beneficiaries know their rights and have a good understanding of their situation and destination; c) In case any of the proposed beneficiaries was deported separately from their children, adopt immediately the necessary measures in the framework of international cooperation to guarantee their reunification, taking into account the child's best interest and the necessary support and care; d) Suspend any migration procedure that

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may result in the separation of the children from their parents; and e) Agree upon the measures to be adopted regarding the proposed beneficiaries and their representatives.

II. SUMMARY OF ALLEGED FACTS AND ARGUMENTS SUBMITTED BY THE PARTIES

1. Information provided by the applicants

4. The request was submitted on behalf of migrant children and adolescents who arrived with their families to the southern border of the United States of America and who were separated from their families by the authorities of that country. The applicants alleged that the universe of proposed beneficiaries may be determined in accordance with Article 25.6.b of the Rules of Procedure, based on their migration status, their geographical location, their age and the conditions of separation of their parents or families. The request is set in the context of the "Zero Tolerance" policy carried out by the current U.S. administration, which they claim is a way to prevent immigration and yet cause irreparable harm to the proposed beneficiaries:

> In relation with this request, the Secretary of Homeland Security, Kirstjen Nielsen, before the Committee on Homeland Security and Governmental Affairs of the US, on May 15, 2018, expressed that the U.S. policy was to file criminal charges for the illegal crossing of the border. Consequently, if the defendants cross the border with their children, they must be separated. Secretary Nielsen stated that separation occurs every day. On the other hand, regarding migrants, Jeff Sessions, the Attorney General of the United States stated that if illegal immigrants do not want to be separated from their kids 'they should not bring them.'

5. The applicants alleged that the seriousness of the situation is based on three aspects. First, that the policy of the U.S. government is causing irreparable harm to family ties and ignoring the principle of the best interests of the child and, therefore, that it violates Article VII of the Rights and Duties of Man, which states that family is the natural and basic element of society, and as such it must be protected by society and by the State. As an example of the consequences of this policy, the applicants referred to a Honduran father who reportedly committed suicide in a Texas prison after being separated from his family.[1]

6. Second, the applicants argued that the separation itself adversely affects the right to personal integrity of the proposed beneficiaries, as established in Article V of the American Declaration. The applicants alleged that the stress, fear and suffering caused by the uncertainty of not knowing whether they could be reunited or seen again causes serious psychological damage, which in turn worsens by the fact that the detention of children has a more serious impact on their well-being, and because most of them do not even understand the language or the situation in general. Third, the separation policy affects the right of the proposed beneficiaries to personal liberty in accordance with Article VII of the Declaration, to the extent that leaving the children under the custody of the State has resulted in their arrest and in some cases their relocation to temporary homes, where, in some cases, they have disappeared. According to the applicants, the personal liberty of children and adolescents is affected, they are separated from their families and detained without any justification. Finally, according to the applicants, this leads to exposing the children to an increased risk of being subjected to violence, human trafficking and exploitation.

7. The applicants provided information regarding the location of some of the proposed beneficiaries. In that regard, the National Human Rights Commission of Mexico indicated that in the State of Texas, some children were being held in the following centers: BCFS Baytown, Shiloh, Southwest Key Casa Quetzal, Southwest Key Casa Moctezuma, Southwest Key Casa Mesa Shelter, Southwest Key Casa Houston, Catholic Charities and Southwest Key Casa Conroe. Similarly, the Human Rights Ombudsman's Office in El Salvador reported that as of June 27, 2018, about 145 children were being held by the Office of Refugee Relocation (ORR) in the following shelters in Texas: Upbring, El Tornillo, San Antonio Bokenkamp Old House, BCFS Paso Processing Center, Temporary Foster Care, Baytown Southwest Key, Quetzal House, Southwest Key Father's House, Southwest Key President, Brownsville, Border Patrol Detention Center known as Ursula, New Hope Hop Children, Southwest Key Combes, and Catholic Charities. Likewise, in the state of Arizona: Casa Phoenix, Las Palmas, Phoenix Southwest Key Kokopelli, Campbell, Hacienda el Sol and Estrella del Norte. In addition, Salvadoran authorities indicated they had located more citizens in Seattle, Washington and Atlanta, Georgia. In relation to Honduran children, applicants mentioned

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the following centers: Crittenton, Eloy Az, Conroe, Stdc, Prairieland, McAllen, Ehdc, Pidc Los Fresnos Texas, Puerto Isabel, Otero New Mexico, Pidc Los Fresnos Texas, Otero Texas, Epf Mcallen Texas, East Hidalgo Texas, West Texas, El Paso Texas, Brooks Texas, Pidc Los Fresnos Texas and La Salle Laredo Texas. In their latest report, the petitioners also mentioned that migrant children were allegedly detained in Florida, Michigan, Kansas City and Illinois.

8. In relation to the conditions of detention, the applicants reported that according to the Human Rights Commission of Mexico, children detained in the BCFS Baytown Detention Center have had telephone communications once a week. Nonetheless, they are only authorized to call consular personnel and sometimes to relatives who live in their country of origin, which means that they are not authorized to call their parents, several of whom are subject to criminal proceedings. On the other hand, parents are only authorized to make calls if they have sufficient credit in their respective accounts. In addition, the applicants indicated that parents cannot visit their children and vice versa. However, in some cases, consular staff can visit the detention centers, verify their conditions and then transmit information to each of them. Similarly, Salvadoran and Honduran authorities recently reported significant obstacles in telephone communication between families; however, there are attempts to fix it.

9. In their last communication, the applicants stated that, according to a United States government report of July 19, 2018, of the 2551 children under the age of five, only 1606 were eligible to reunify with their parents, while 900 were declared ineligible, since their parents had a criminal record or had waived the right to reunification at the time they were deported. Within the first group, the applicants indicated that around 848 parents have passed the investigation stage and could meet with their children, while other parents are awaiting the interview with the federal authorities or have been released by the United States Immigration and Customs Enforcement (ICE). In addition, with respect to the injunction issued on June 26, 2018 by the U.S. District Court for the Southern District of California,[2] the applicants indicated that until July 17 —one of the deadlines set by the judge for children under five— the government had only managed to reunite less than 60 children with their families, out of a total of 103. In general, the applicants emphasized that although the government has simplified the procedures and is trying to reunite the rest of the families, there are also serious administrative problems with respect to identification and location; also, some parents were allegedly forced or tricked into signing forms in which they agreed to be quickly deported without their children, including adults who did not understand the nature of the proceedings or only spoke an indigenous language or were even illiterate.

10. Consequently, the applicants asked the IACHR to issue precautionary measures to request the United States of America to complete the separation of migrant children and adolescents from their families, to take all necessary measures to reunite the children who have been separated from their parents, to protect the rights to personal integrity, health, family and personal freedom, related to the rights of migrant children.

2. RESPONSE OF THE STATE

11. The State firstly highlighted that the topic of migration is of significant interest to the United States, as reflected by its ongoing engagement in several migration-related matters before the Commission and in other OAS bodies. Furthermore, while recognizing the legacy of immigrants – 1.1 million of which entered the U.S. during 2017 –, it must also be pointed out that the United States is a nation of laws. In this sense, the State referred to case law from the Commission itself,[3] according to which "[. . .] it is the sovereign right of States to control their borders and set migration policies in accordance with their domestic laws and policies, consistent with their international obligations [. . .]. States retain the discretion to determine whether to expand migration pathways, detain migrants who seek entry, impose criminal penalties for illegal immigration, or adjust the status of migrants. With this in mind, the United States will continue to exercise its sovereign authority over its immigration policy."

12. Notwithstanding the aforementioned, the State also referred to its efforts and commitment to cooperate with other countries in the Hemisphere so as to tackle the root causes behind the current crisis.[4] Moreover, "[a]s to cases involving family separation during detention, on June 20 – after the Petitioners in the above-referenced matters submitted their respective petitions for precautionary measures –an Executive Order was signed, which directs the Administration to continue to protect the border, while simultaneously avoiding the separation of families to the extent we can legally do so. The U.S. Departments of Homeland Security and Health and Human Services are

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also working to reunify parents with their children. In light of litigation on these matters before our independent judiciary and recent court decisions, we are unable to provide the Commission with further details at this time."

13. On July 20, additional information was requested from the State, specifically: a. If the judicial decision of June 26, 2018 that required the reunification of the families, had been fulfilled in relation to the proposed beneficiaries and the possible legal consequences of their non-compliance; b. how many families were reunited and how many would be scheduled to meet, in accordance with the terms of the June 26 decision; c. if the relevant authorities established means of communication between the parents and the children who remain separated; d. how many children or their parents have been deported separately and, if applicable, the measures to ensure their reunification; e. how many children were placed in the United States in foster homes or under the care of State agencies.

14. In a note received on August 10, 2018, the State informed that, under the decision of the U.S. District Court for the Southern District of California, children reunification has been carried out, having submitted a progress report on August 2, 2018.[5] The State reassured that, by means of this process, the main objective of the government is to protect the security and well-being of the children under its custody and to reunite them with eligible parents. Additionally, it pointed to the fact that many employers from the administration have spent weeks to overcome the challenge of expedite reunification while ensuring the family relationships and security of the children.

15. According to the United States, in the forthcoming days and weeks, the government will continue with the reunification process between parents and their children insofar as they are located and are willing to be reunified. Moreover, it will continue to work on reuniting adults that have been deported, including those that have shown preference for leaving their children in the United States but who wish to be reunified. The United States highlighted that if the State is unable to reunify the children with their parents –given that the parent either decided not to be reunited with the child or may not be eligible– Homeland Security will continue to stand by its sponsorship process in order to place the children with a sponsor in the United States, generally a family member. The United States reiterated that in view of the fact that a litigation is being processed before the Judiciary regarding this matter, it is not in a position to provide further details.

16. Finally, the United States indicated that it is making efforts to develop solutions to the circumstances that underlie and lead to irregular migration in Central America. In that regard, it highlighted that it is working with regional governments, international organizations, the private sector and civil societies to enhance citizen security, improve governance and boost economic prosperity.

III. PRELIMINARY CONSIDERATIONS

17. Prior to the analysis on compliance with the requirements set forth in the Rules of Procedure, the Commission deems it relevant to highlight that on this occasion it is not called upon to declare whether or not the State violated any rights contained in the American Declaration of the Rights and Duties of Man, nor to grant reparations, if it were the case. In this sense, and within the framework of precautionary measures, the Commission is competent to establish whether the proposed beneficiaries are at risk of serious, urgent and irreparable harm, as enshrined in Article 25 of its Rules of Procedure.

18. Moreover, the Commission wishes to highlight that it has previously requested protection of persons that have not been previously designated. This is set forth in Article 25.3 of the Rules of Procedure: "Precautionary measures may protect persons or groups of persons, as long as the beneficiary or beneficiaries may be determined or determinable through their geographic location or membership in or association with a group, people, community or organization." In this sense, the Commission has granted precautionary measures for indigenous peoples and peasant communities and persons deprived of liberty in penitentiaries or in migratory detention centers.

19. The Commission notes that the persons proposed as beneficiaries by the applicants comprise the children who, due to the implementation of the "Zero Tolerance" policy announced this April 7, were separated from their families and detained by U.S. authorities when crossing the border. In its last report, the United States noted that, as of August 1, 2018, there are 572 children who are in these conditions under the administration of the Office of Refugee Resettlement. The Commission takes note that the applicants have indicated the geographic location of the centers in which the persons proposed as beneficiaries are reportedly located (*see* para. 7). In view of the

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foregoing, and the exceptional situation presented by this case, the Commission will consider such children as proposed beneficiaries, given that, being under the custody of the State in specific centers, they are determinable and, therefore, may be identified by the latter in accordance with article 25.3 of the Rules of Procedure.

20. Furthermore, the Commission recalls that, under the principle of complementarity, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this sense, the nature of international jurisdiction is "auxiliary" or "complementary," without replacing it.[6] In the present matter, the Commission has followed the implementation of the "Zero Tolerance" policy and previously expressed its concern through a press release.[7] Subsequently, the Commission learned of an Executive Decree signed on June 20, 2018, which reportedly prevented any further separation of children from their migrant families. Also, after the filing of this request for precautionary measures, the Commission learned that, through the decision of the U.S. District Court for the Southern District of California of June 26, 2018, a series of measures were ordered, aimed at facilitating regular communication between children and their parents and achieving reunification of children in specific time frames, the last having just expired on July 26.[8]

21. In view of the complementary nature of the Inter-American system, the IACHR requested information from the State about the results of the previous measures regarding the situation of risk alleged by the proposed beneficiaries. Consequently, the Commission shall present its determinations in this resolution taking into account that "invoking the principle of complementarity, as a basis to consider that the implementation of precautionary measures is inadmissible, implies that the State concerned must bear the burden of proving that the applicants are not in the conditions established in Article 25 of the IACHR Rules of Procedure. The latter, in view of the fact that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that in assessing the situation, the requirements of seriousness and urgency that call for international intervention to prevent irreparable harm would not be identified."[9]

IV. ANALYSIS OF THE REQUIREMENTS OF ARTICLE 25 OF THE RULES OF PROCEDURE

22. The precautionary measures mechanism is part of the Commission's function of monitoring compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States, 1948. These general monitoring functions are established in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the IACHR's Statute. The precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. Pursuant to this article, the Commission grants precautionary measures in serious and urgent situations, and when said measures are necessary to prevent an irreparable harm to people.

23. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter "the Inter-American Court" or "IAHR Court") have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the petition in the Inter-American System is resolved. The object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits, and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;

b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

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24. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.[10]

25. Within the analysis of the regulatory requirements, regarding the requirement of seriousness, the Commission notes that according to the disaggregated information provided by the State, in view of the judicial decision of June 26, 2018 and of the expiration of the time-limit set forth for the reunification of the children and parents affected by the "Zero Tolerance" policy, out of the 2551 children affected, 572 have allegedly not yet been reunified for various reasons. In fact, according to the information from the State, the parents of 410 children may already be outside of the United States, and there is no detailed information indicating in which countries they may be or how the State intends to achieve reunification in the short term. In effect, the Commission notes with deep concern that, according to the State report, such reunification may be impossible and the children may be handed over to sponsors in the United States. Even though most of the times they are given to a family member, it would not always the case.

26. The Commission recalls that the Inter-American system has made determinations on some processes, such as those related to adoption, guardianship or custody, in which there is a risk of children being separated from their biological parents, and has established that their rights to integrity, identity and family life may be at serious risk, leading to the request for precautionary protection.[11] In such matters, the Commission has learned that the passing of time inevitably constitutes a defining element when assessing the possible existence of a situation of risk, taking into account the protection needs in each particular case based on concrete circumstances.

27. As a matter of fact, the prolonged separation of the children from their family is likely to have a serious impact on the affective ties with their relatives[12], resulting in emotional and psychological distress that could affect their personal integrity by placing the balanced development of their personality at risk[13]. In the same way, the Inter-American system has learned that in the case of children and adolescents, the right to identity is linked to the right to a family life, given the role that family plays in the combination of attributes and characteristics that allow for the individualization of the person in society[14]. Additionally, the concrete circumstances and the specific context of the separation of the children from their family have different impacts on their personal integrity and on their comprehensive and balanced development. The children's personal factors such as their age and level of development are also important. Both exogenous and endogenous aspects should be duly considered.

28. As regards the integrity of the children, the IACHR has learned that family contributes decisively to the well-being of the children and to their comprehensive and balanced development in the physical, mental, spiritual, moral, psychological and social dimensions. Therefore, the separation of the children from their families may place the development and evolution of their different abilities at risk[15]. In this regard, the Declaration and the American Convention, in Articles VI and 17.1 respectively, recognize family as the protective core of childhood and adolescence and confer upon it an important role in guaranteeing the care, well-being and protection of children and adolescents by being the natural space for their growth and development, particularly in the early stages of their lives[16]. The right to a family life established in Article 17.1 of the American Convention on Human Rights and VI of the American Declaration of Rights and Duties of the Man is strictly related to the effective validity of the rights of the children and, therefore, to Article 19 of the American Convention and VII of the American Declaration, because of the place the family has in the life of the children and its protective, care and upbringing role[17]. The Inter-American Commission and the Inter-American Court have indicated that "in principle, the family should provide the best protection to the children (. . .)."Moreover, the State has the obligation not only to establish and directly execute protective measures with regard to the children, but also to favor, in the most comprehensive way, the development and the strength of the family.[18] Therefore, children must remain with their families, unless there are compelling reasons, according to their best interests, that may justify the separation from their families. In any case, the separation should be exceptional and temporal.[19]

29. In the case of separation of children from their families in the migration context, the Inter-American system has established that it may lead to the disintegration of families. Articles 17 of the Convention and VI of the American Declaration establish that, in the right to family protection, as a rule, children must remain with their parents or those who act on their behalf, and that their separation should be prevented, unless the best interest of the children

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dictates otherwise.[20] In this sense, legal separations of children from their families must only proceed in an exceptional manner if they are duly justified according to their best interest and are temporary.[21] Regarding this last point, the Commission notes that, in its recent General Joint Observations 3/22 and 4/23, the Committee on Migrant Workers and their Families and the Committee on the Rights of the Child have determined that a rupture in the family unit can occur from the expulsion of one or both progenitors, in such a way that separating families due to the violation of immigration laws results in a disproportionate restriction.[22]

30. Additionally, the specific circumstances in migratory contexts in which separation of children from their families may occur could potentially have negative consequences in their personal integrity and comprehensive and balanced development. The physical and forced separation of the children from their biological parents and/or other close relatives—adults that are their immediate mentors and with whom they have a strict affective relationship of security and confidence—, is already negative. Moreover, if it occurs in a context of uncertainty about the current and future situation, lack of knowledge of their destination, and absence of any kind of contact—all of this in an unknown country and without a supporting network integrated by adults whom the children can trust—, the consequences are even more harmful to their personal integrity and development. The consequences of family separations that are carried out under these circumstances have the following effects on the children affected by it: stress, anxiety, frustration, incomprehension, sadness, depression and trauma that may result in physical, mental, spiritual, moral psychological and social harm on the children, and may even be of a long-lasting and irreversible nature, due to its evolutionary and growing state in all these facets. It is worth mentioning that the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that "the deprivation of liberty of children based on their or their parents' migration status [. . .] may constitute cruel, inhuman and degrading treatment of migrant children."[23]

31. In view of the foregoing, the Commission considers that just as it has stated in the aforementioned events (*see* para. 26), the rights to family protection, personal integrity and identity may require precautionary protection in the migration contexts when the separation, due to the specific circumstances in which they occur, may have *prima facie* an irreparable impact on those rights.

32. The Commission takes note that the United States did not provide information on the specific situation of the persons proposed as beneficiaries, nor on whether the reunification has effectively been planned for the short term, if there is a timeline for reunification in place, or whether effective means of communication have been enabled. Moreover, the United States has not provided detailed information on the specific circumstances of the proposed beneficiaries, their health or detention conditions. According to the State's report, in some instances reunification may be impossible and these children could be given to a sponsor in the United States, who in some cases may not be a family member.

33. The Commission regrets the lack of specific information by the State, which is particularly relevant when assessing the seriousness of the situation of risk. Regarding this aspect, the Commission notes that the separation of children originated from the actions of the State, without any justification that it was carried out on the basis of the children's best interest. The State, as the main guarantor of the rights of the proposed beneficiaries, must have the means to report to the Commission about their specific situation.

34. Consequently, in the abovementioned conditions described by the applicants and, given that the State was unable to provide a sufficient explanation to dismiss such allegations, the Commission concludes that the rights to life and personal integrity and, especially in the case of the children, their right to identity is *prima facie* in a situation of risk, and that the requirement of seriousness is met. By taking this determination, the Commission takes into account the risk as a whole, the possible loss of the relationship between the children and their biological family as a possible result of the separation, in the absence of concrete information provided by the State regarding their situation, as well as the actual possibilities of reunification. Moreover, in some cases, a deportation could have been materialized separately, which adds to the emotional and psychological impact that such situation of uncertainty regarding the reunification of the children may have in a defining moment in which family plays an important role in the development of their respective personalities and identities.

35. As regards the requirement of urgency, the Commission observes that in light of the situation of risk described, the State adopted measures in accordance with the judicial decision of June 26, 2018 which might mitigate the risk, given that the ruling that ordered the immediate adoption of the necessary measures to facilitate regular communication between children and their parents, telephone contact and others that would allow for reunification within the specific time-frames. In view of the complementarity of the Inter-American system, the Commission deemed it pertinent to request information from the State, particularly on the progress and efficiency of the ruling.

36. The Commission notes that even though the State has taken important steps towards mitigating the damage caused, the time-limit to reunify the children affected by the "Zero Tolerance" policy expired on June 26, 2018, and 572 are still awaiting reunification. In light of the alleged lack of effectiveness of the measures adopted by the State and the lack of explanation on the exact procedures by which the State intends to reunify the proposed beneficiaries, the Commission considers that the requirement of urgency is met due to the imminent risk of an impact on their rights in face of the lack of information on the whereabouts of some of the proposed beneficiaries, the alleged continuity of separations without concrete information about when reunification will be carried out, even though the time-limit of the judicial decision of June 26, 2018 has expired. In such circumstances, the immediate adoption of measures to safeguard the rights of the proposed beneficiaries is required.

37. Regarding the requirement of irreparability, the Commission considers that it is fulfilled, given the severe impact that the situation described may have on personal integrity and the possible loss of family relationships that are part of family rights, which additionally, in the case of children and due to its own severity and impact, may inevitably persist and extend to adult life.

V. BENEFICIARIES

38. The Commission declares that the beneficiaries of the present precautionary measure are the children that have been separated from their parents as a result of the "Zero Tolerance" policy, who are under the custody of the Office of Refugee Relocation, comprising 572 children to date, according to the State. With this information, the Commission estimates that these children are determinable and may be individualized in accordance with Article 25.3 of the Rules of Procedure.

VI. DECISION

39. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the United States:

a) Adopt the necessary measures to protect the rights to a family life, personal integrity, and identity of the proposed beneficiaries. Particularly, assuring that these rights are protected through the reunification of the children with their biological families and in support of the children's best interests;

b) Adopt the necessary measures, while the reunification is carried out, to immediately guarantee an appropriate, free, and regular communication between the beneficiaries and their families, in accordance with their best interests. Moreover, with the aim of protecting their rights, provide medical and psychological assistance, among others that might be necessary such as consular assistance. Also, provide interpreting services when necessary so that the proposed beneficiaries know their rights and have a good understanding of their situation and destination;

c) In case any of the proposed beneficiaries was deported separately from their children, adopt immediately the necessary measures in the framework of international cooperation to guarantee their reunification, taking into account the child's best interest and the necessary support and care;

d) Suspend any migration procedure that may result in the separation of the children from their parents; and

e) Agree upon the measures to be adopted regarding the proposed beneficiaries and their representatives.

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40. The Commission also requests that the Government of the United States inform the Commission within a period of 10 days, as from the date of notification of the present resolution, about the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

41. The Commission highlights that, in conformity with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment on the possible violation of rights safeguarded in the American Declaration and other applicable instruments.

42. The Commission requests that the Secretariat of the Inter-American Commission notify the United States and the applicants of the present resolution.

43. Approved on the 16th day of the month of August, 2018 by: Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Luis Ernesto Vargas Silva, Second Vice-President; Joel Antonio Hernández García, Antonia Urrejola and Flávia Piovesan, members of the IACHR.

María Claudia Pulido
Assistant Executive Secretary

ENDNOTES

1 New York Times, "Honduran Man Kills Himself after Being Separated From Family at U.S. Border, Reports Say." Available at: https://www.nytimes.com/2018/06/10/us/border-patrol-texas-family-separated-suicide.html

2 On February 26, 2018, the American Civil Liberties Union (ACLU) filed a joint complaint against ICE and others for the separation of the families, along with a resource for a collective preliminary injunction to prevent the government from separating families. On June 26, 2018, the trial court issued a preliminary injunction in the following terms:

> 1) Defendants [. . .] are preliminarily enjoined from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the child, child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child in DHS custody.
>
> 2) Unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child:
>
> a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order;
>
> b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order.
>
> 3) Defendants must immediately take all steps necessary to facilitate regular communication between Class Members and their children who remain in ORR custody, ORR foster care, or DHS custody. Within ten (10) days, Defendants must provide parents telephonic contact with their children if the parent is not already in contact with his or her child.
>
> 4) Defendants [. . .] are preliminarily enjoined from removing any Class Members without their child, unless the Class Member affirmatively, knowingly, and voluntarily declines to be reunited with the child prior to the Class Member's deportation, or there is a determination that the parent is unfit or presents a danger to the child.

3 *Mortlock v. United States*, Case No. 12.534, Report No. 63/08, Admissibility & Merits, July 25, 2008, para. 78.

4 According to the State, approximately $2.6 billion were destined to foreign assistance to address the security, governance, and economic challenges in Central America for Fiscal Years 2015 to 2018.

5 The report indicates the following data: "[t]otal number of possible children of potential class members originally identified: 2,551[. . .]"; "[c]hildren remaining in care with ORR, where the adult associated with the child is either not originally eligible for reunification or not available for discharge at this time: 572". Among these children the report states: "adult outside the US: 410 children".

6 IACHR, Resolution 31/2017, Francisco Javier Barraza Gómez regarding Mexico (MC-209-14), August 15, 2017, available in Spanish at: http://www.oas.org/es/cidh/decisiones/cautelares.asp

7 IACHR, "IACHR Expresses Concern over Recent Migration and Asylum Policies and Measures in the United States," press release dated June 18, 2018. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/130.asp

8 The decision made on June 26, 2018, establishes, among others, that unless it is determined that the parent is unfit or poses a threat to the child, or unless he/she affirmatively, consciously and willingly refuses to reunite with the child, "(a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order; and (b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order."

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9 IACHR, Resolution 31/2017, Francisco Javier Barraza Gómez in relation to México (MC-209-14), August 15, 2017, para. 22, available at: http://www.oas.org/es/cidh/decisiones/cautelares.asp. Se also, IACHR, Resolution 32/2017, Santiago Maldonado in relation to Argentina, August 22, 2017, para. 16, available at : http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf; IACHR, Comprehensive Protection Policies for Human Rights Defenders, December 29, 2018, para. 68.

10 In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACHR, *Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

11 IAHR Court, Resolution of the Inter-American Court of Human Rights dated July 1, 2011, Precautionary Measures regarding Paraguay. L.M Matter, considerandum 16.

12 IACHR, "Request for Precautionary Measures to the Inter-American Court of Human Rights regarding boy LM," May 18, 2011, para. 54. On this matter, the Commission has learned that "the age factor and the passing of time are vital in the establishment of affective bonds, the creation of family relationships, personality development and the development of the child's identity, particularly at an early age. Consequently, there is a duty of exceptional diligence given that the time factor may cause irreparable harm to the boy." IACHR, *The right of boys and girls to a family. Alternative care. Ending institutionalization in the Americas*. October 17, 2015, para. 316.

13 IACHR Court, Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay. L.M. Matter, Considerandum 14 and 18.

14 The Inter-American Judicial Committee has considered that the right to identity is a key human right that can be conceptualized, in general, as a group of attributes and characteristics that allow the individualization of the person in society and, in that sense, includes several other rights established in the Convention, according to the subject of law implied and the circumstances of the matter. Inter-American Judicial Committee, Opinion "about the scope of the right to identity," order IAJC/doc. 276/07 rev. 1, of August 10, 2010. The IAHR Court and the Commission have also established the relation that it has with the right to family life. IAHR Court, Order of the Inter-American Commission on Human Rights of July 1, 2011, Provisional Measures regarding to Paraguay, L.M. Matter, Considerandum 15.

15 See, IACHR *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección, paragraphs 338 and ss. (Available in Spanish)*

16 See, IACHR, *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección, paragraphs 388 and ss.* (Available in Spanish). *IACHR, Report on the Rights of Boys and Girls to a family. Alternative care. Ending institutionalization in the Americas, OEA/Ser.L/V/II. Doc.54/13, 2013, particularly paragraphs. 49 a 64. (Available in Spanish)*

17 IACHR, *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección, paragraph 389.* IACHR, *Informe sobre el Derecho del niño y la niña a la familia. Cuidado alternativo. Poniendo fin a la institucionalización en las Américas*, paragraph. 57. (Available in Spanish)

18 IAHR Court. Legal condition y and human rights of the children. Advisory opinion AO-17/02, para. 66. *See also*, IACHR, *Informe sobre el Derecho del niño y la niña a la familia. Cuidado alternativo. Poniendo fin a la institucionalización en las Américas*, paragraphs. 42 and 53. In the context of the universal system, the Human Rights Committee of the United Nations has also expressly related the protection that the family deserves, established in Article 23.1 of the International Pact on Civil and Political Rights in compliance to the duty of protection of the children due to their condition, established in Article 24.1 of the same Pact, Human Rights Committee, General Observation No. 17, Article 24–Rights of the children, 35th period of sessions, U.N. Doc HRI/GEN/1/Rev.7 (1989). And General Observation No.19. Article 23 – The family, 39th period of sessions, U.N. Doc. HRI/GEN/1/Rev.7 (1990).

19 IAHR Court. Legal condition y and human rights of the children. Advisory opinion AO-17/02 August 28, 2002. Series A No. 17, resolution item No. 5 and paragraph 77. *See also*, IACHR, *Report on the Rights of Children to a family. Alternative care. Ending institutionalization in the Americas*, OEA/Ser.L/V/II. Doc.54/13, 2013, paragraphs. 65 a 75. (Available in Spanish).

20 IAHR Court. Rights and guarantees of children in the migration context and/or in need of international protection. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 177.

21 IAHR Court. Rights and guarantees of children in the in the migration context and/or in need of international protection. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 273. Quoting Matter *Fornerón and daughter Vs. Argentina*. Merits, Reparations and Costs. Order of April 27, 2017. Series C No. 242, para. 116.

22 Joint general observation No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and their families and No. 23 (2017) of the Committee on the Rights of the Child on the duties of the States regarding children's human rights in the context of international migration in the countries of origin, transit, destination and return. CMW/C/GC/4, CRC/C/GC/23, para. 29.

23 Joint general comment No. 4 (2017) of the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on the obligations of States regarding human rights of children in the context of international migration in countries of origin, transit, destination and return. CMW/C/GC/4, CRC/C/GC/23, para. 9.

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PRECAUTIONARY MEASURE NO. 505-18 (IACHR)*
[August 16, 2018]

IACHR Inter-American Commission on Human Rights

OAS More rights for more people

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLUTION 63/2018

Precautionary Measure No. 505-18
Vilma Aracely López Juc de Coc and others regarding the United States of America
August 16, 2018

I. INTRODUCTION

1. On May 31, 2018, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a request for precautionary measures presented by the Texas Civil Rights Project, the Women's Refugee Commission, the Immigration Clinic of the University of Texas School of Law and Garcia & Garcia Attorneys at Law, P.L.L.C. ("the applicants"), urging the IACHR to request that the United States of America ("the State" or "the United States") adopt precautionary measures to protect the rights of five migrant families consisting of parents and their children identified as Ms. Vilma Aracely López de Cuc and others ("proposed beneficiaries"). According to the request, the proposed beneficiaries were separated by the authorities once they were detained upon their irregular entry into U.S. territory at the border with Mexico, in Texas. The children were reportedly held under custody of the Department of Health and Human Service Office of Refugee Resettlement (ORR), while their parents were being detained at different facilities, facing administrative and judicial proceedings.

2. The Commission requested information from both parties. The applicants replied on June 27, while the State did so on June 29. Furthermore, the Commission provided the applicants with the State's report of June 29, 2018 and requested that they send in the observations that they considered relevant. No observations have been presented to date. The Commission requested information from the State on July 20, 2018, and received its report on August 10, 2018.

3. After analyzing the factual and legal allegations submitted by the parties, the Commission considers that Ms. Vilma Aracely López de Cuc and the rest of the proposed beneficiaries are *prima facie* in a serious and urgent situation, since their rights to personal integrity, family life and, in the case of children, their right to identity, are at risk. Consequently, in accordance with Article 25 of the Rules of Procedure, the Commission requests that the United States: a) Adopt the necessary measures to protect the rights to a family life, personal integrity, and identity of Ms. Vilma Araceli López de Coc and the other proposed beneficiaries identified in this request. Particularly, assuring that said rights are protected through the reunification of the above-mentioned families and caring for the children's best interests; b) Adopt the necessary measures, while the reunification is carried out, to immediately guarantee an appropriate, free, and regular communication between the beneficiaries and their families, in accordance with their best interests. Moreover, with the aim of protecting their rights, provide medical and psychological assistance, among others that might be necessary such as consular assistance. Also, provide interpreting services when necessary so that the proposed beneficiaries know their rights and have a good understanding of their situation and

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destination; c) In case any of the proposed beneficiaries was deported separately from their children, adopt immediately the necessary measures in the framework of international cooperation to guarantee their reunification, taking into account the child's best interest and the necessary support and care; d) Suspend any migration procedure that may result in the separation of the children from their parents; and e) Agree upon the measures to be adopted regarding the proposed beneficiaries and their representatives.

II. SUMMARY OF ALLEGED FACTS AND ARGUMENTS SUBMITTED BY THE PARTIES

1. Information provided by the applicants

4. The proposed beneficiaries are the following Guatemalan migrant families, who were detained between May 21 and 22, 2018 in or near Hidalgo County, Texas, after irregularly crossing the U.S.-Mexico border: i) Ms. Vilma Aracely López Juc de Coc (29 years old) and her son S.V.C.L. (11 years old), from a remote indigenous village and who fled their country of origin after the father was allegedly murdered by criminals in February 2018; ii) Mr. Antonio Bol Pauu (40 years old) and his son R.B.S. (12 years old), from the predominantly indigenous community of Ixcán, Quiché; iii) Mr. Leonel Chub Cucul (37 years old) and his son L.D.C.I. (11 years old), who are also indigenous, from El Estor, department of Izabal; iv) Ms. María Andrés de la Cruz (30 years old) and her three children D.P.A. (7 years old), G.A.P.P. (8 years old) and D.M.P.A. (11 years old). In addition, Mr. Dagoberto A. Melchor Santacruz (39 years old) and his son K.A.M.A. (16 years old), a teenager with hearing impairment, from El Salvador, were detained in similar circumstances.

5. The request is based on the alleged damage caused by the implementation of the so-called "Zero-Tolerance" policy, adopted by the U.S. Attorney General on April 6, 2018, according to which it "[. . .] direct[ed] each United States Attorney's Office along the Southwest Border – to the extent practicable, and in consultation with [the Department of Homeland Security] – to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under [8 U.S.C.] section 1325(a)."[1] According to the applicants, the separation of parents and children is not required by the law, as the Government assessed, but is rather based on a "deliberate official policy" adopted by the current Administration to prevent families from entering the U.S. without authorization. In this sense, they specified that "[a]lthough nothing in the memorandum specifically mentions separating children from their parents, [it] confirms that the new practice of prosecuting all first-time entrants (and separating children from parents traveling with them) is intended as a punitive deterrence tactic." This would be applied both to asylum seekers and general migrants as well.

6. As the applicants indicated, adults are generally detained in a different detention facility awaiting their federal trials, usually under the U.S. Marshals Service, and in most cases, after being sentenced to "time served" under the above-mentioned section, they are transferred to an administrative detention center under the Immigration and Customs Enforcement (ICE). If such persons are also asylum-seekers, they are referred for a "credible fear interview"[2] in accordance with the law, while reportedly still being deprived of liberty. Should the interview fail (or an appeal be brought before an immigration judge), or if there is no request for asylum, the migrants may be subject to deportation absent any other claim for relief to remain in the U.S. Meanwhile, minors are placed under the custody of the ORR for an indefinite period of time, with no process in place for the children to communicate with their parents or for them to know where their parents are and vice versa. The request stated that children who were separated from their parents are then treated by the authorities as if they were "unaccompanied minors," that is to say, those who crossed the border without being with any adult. Consequently, they are to be placed in shelters under the supervision of the ORR, although the applicants stressed that this happens "[. . .] only because of the government's actions in prosecuting the parents, which rendered the children 'unaccompanied.'"

7. Applicants alleged that there is no mechanism in place to allow families to be reunified in the U.S. while the procedures are still ongoing, or prior to being deported, and that there is no expedited or automatic release from detention of parents whose migration status has been cleared, thus prolonging the separation. Moreover, they pointed out that according to media accounts, some parents have already been deported to their countries of origin while their children remain in the U.S. and inversely, making reunification almost impossible.[3] Thus, applicants claim that, when necessary, community-based alternatives to detention should be employed, and that this

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request for precautionary measures is also aimed at preventing deportations of parents without their children and vice versa, since it would result in further family separation.[4]

8. As it pertains to the situation of the proposed beneficiaries of this procedure, the applicants indicated that as of June 26, 2018, Ms. López de Coc is detained at the Northwest Detention Center in Tacoma, Washington,[5] while her son was admitted at an ORR shelter in South Texas. According to the applicants' last report, mother and son were able to communicate through a phone call only once, for about two minutes. On the other hand, they informed that she had a credible fear interview on June 28, 2018, and on July 2 she was notified that she had demonstrated a credible fear of torture, and that there is "[. . .] a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing." Moreover, Mr. Santacruz is reportedly detained at the Stewart Detention Center in Lumpkin, Georgia, while his son K.A.M.A. was placed in a shelter "in Texas," but his father has since not been able to contact him because he did not "[have] money in his account," as an ORR instructed.[6] According to an affidavit submitted by one of the applicants, Mr. Santacruz was told by Border Patrol agents that his son would be sent to his brother-in-law in California, but this information could not be confirmed, since another applicant called an ORR hotline number, where she was informed that K.A.M.A. was at a shelter.[7] The father is also worried because K.A.M.A. is deaf from one ear and has frequent nose bleedings.

9. On the other hand, applicants reported that both the current situation and location of the rest of proposed beneficiaries are unknown to them. Indeed, neither the parents nor the children appear on the ICE's Online Detainee Locator System, the ORR databases or the Executive Office for Immigration Review (EOIR) hotline. Initially, Mr. Bol Pauu and his son were detained at the Puerto Isabel Detention Center in Los Fresnos, Texas, while the latter was removed by the agents and all contact has been lost since then. Ms. de la Cruz and her three children were allegedly taken to a "[. . .] very cold holding cell, commonly known as 'ice chest,'" and were separated after the mother was processed. The agents told the mother she would see them after her hearing, but this was not complied with. Lastly, no information officially appears about the situation of Mr. Chub Cucul and his son. Most alarming, applicants' inquiries with ORR revealed that the minor is not in one of their shelters.

10. According to the applicants, the lack of information regarding the records kept on adults may indicate the following possibilities: i) the parents are still under ICE custody but this has not yet been updated on the database, which seems unlikely since they were detained approximately five weeks ago; ii) the parents may have been released to a relative in the U.S. and given a "Notice to Appear" before an immigration court; iii) the parents have already been deported. As it regards the minors, applicants similarly alleged that: i) they may have been released to a family member or a sponsor in the U.S.; ii) they might have already been deported. In any case, applicants stressed that they were not able to confirm any of the above, and that the Government was better placed to provide such information. In particular, it should provide information regarding whether the families were deported together or were reunited, in any circumstance.

11. Applicants stated that at this time they were unable to assess whether the separated children will be reunited with their parents, nor the time or manner of the reunification. In this regard, they pointed out to a "Fact Sheet" issued by the U.S. Department of Homeland Security on June 23, 2018,[8] claiming that "[. . .] the United States Government has disclosed very little information pertaining to its plans, if any, to reunite separated families and whether the separation is temporary in nature." As to the "Fact Sheet," the applicants stated that it mentions in general terms that the U.S. Customs and Border Protection (CBP) so far has reunited 522 children in custody, but whether this includes the proposed beneficiaries has not been confirmed through the available information. In addition, the document does not specify a clear procedure or plan to reunite families who have been separated under the zero-tolerance policy, except that the Government "[. . .] 'is working' to reunite children with adults 'for the purposes of removal,'" primarily at the Port Isabel Detention Center.

12. Lastly, applicants informed that on February 26, 2018, the American Civil Liberties Union (ACLU) filed a class action lawsuit[9] against ICE and others over the practice of family separation (the applicants are not named plaintiffs in this case), together with a motion for a class-wide preliminary injunction to prevent the Government from separating families. On June 26, 2018, the court of first instance issued a preliminary injunction in the following terms:

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> 1) [. . .] Defendants [. . .] are preliminarily enjoined from detaining Class Members in DHS custody without and apart from their minor children, absent a determination that the parent is unfit or presents a danger to the child, unless the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child in DHS custody [. . .].
>
> 3) Unless there is a determination that the parent is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited with the child:
>
> > a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order; and
> >
> > b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order.
>
> 4) Defendants must immediately take all steps necessary to facilitate regular communication between Class Members and their children who remain in ORR custody, ORR foster care, or DHS custody. Within ten (10) days, Defendants must provide parents telephonic contact with their children if the parent is not already in contact with his or her child [. . .]."
>
> 6) Defendants [. . .] are preliminarily enjoined from removing any Class Members without their child, unless the Class Member affirmatively, knowingly, and voluntarily declines to be reunited with the child prior to the Class Member's deportation, or there is a determination that the parent is unfit or presents a danger to the child [. . .]."

13. However, applicants stressed that this ruling is preliminary and thus not final, since the Government will likely appeal it first to the Court of Appeals of the Ninth Circuit and eventually to the Supreme Court of the United States. Consequently, they requested that the IACHR adopt precautionary measures so as to: i) reunite the five families immediately and ensure that, if ordered removed, no parent is deported without having first had the opportunity to decide whether the child shall return as well to its country of origin or remain in the U.S. to seek relief; ii) in the meanwhile, ensure that both parents and children know the whereabouts of each other and are able to establish a regular and free communication; iii) provide medical attention as appropriate to the trauma suffered; and iv) other measures concerning the general migrant population at risk, such as stopping the practice of criminally prosecuting migrants and separate families, among others.

2. Response of the State

14. The State firstly highlighted that the topic of migration "[. . .] is one of significant interest to the United States, as reflected by [its] ongoing engagement in several migration-related matters before the Commission and in other OAS bodies." Furthermore, while recognizing the legacy of immigrants – 1.1 million of which entered the U.S. during 2017 –, it must also be pointed out that the United States is a nation of laws. In this sense, the State referred to case law from the Commission itself,[10] according to which "[. . .] it is the sovereign right of States to control their borders and set migration policies in accordance with their domestic laws and policies, consistent with their international obligations [. . .]. States retain the discretion to determine whether to expand migration pathways, detain migrants who seek entry, impose criminal penalties for illegal immigration, or adjust the status of migrants. With this in mind, the United States will continue to exercise its sovereign authority over its immigration policy."

15. Notwithstanding the aforementioned, the State also referred to its efforts and commitment to cooperate with other countries in the Hemisphere so as to tackle the root causes behind the current crisis.[11] Moreover, "[a]s to cases involving family separation during detention, on June 20 – after the Petitioners in the above-referenced matters submitted their respective petitions for precautionary measures –an Executive Order was signed, which directs the Administration to continue to protect the border, while simultaneously avoiding the separation of families to the extent we can legally do so. The U.S. Departments of Homeland Security and Health and Human Services

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are also working to reunify parents with their children. In light of litigation on these matters before our independent judiciary and recent court decisions, we are unable to provide the Commission with further details at this time."

16. In a note received on August 10, 2018, the State informed that, under the decision of the U.S. District Court for the Southern District of California, children reunification has been carried out, having submitted a progress report on August 2, 2018.[12] The State reassured that, by means of this process, the main objective of the government is to protect the security and well-being of the children under its custody and to reunite them with eligible parents. Additionally, it pointed to the fact that many employers from the administration have spent weeks to overcome the challenge of expedite reunification while ensuring the family relationships and security of the children.

17. According to the United States, in the forthcoming days and weeks, the government will continue with the reunification process between parents and their children insofar as they are located and are willing to be reunified. Moreover, it will continue to work on reuniting adults that have been deported, including those that have expressed preference for leaving their children in the United States. The United States highlighted that if the State is unable to reunify the children with their parents –given that the parent either decided not to be reunited with the child or was declared "ineligible"– Homeland Security will continue to stand by its sponsorship process in order to place the children with a sponsor in the United States, generally a family member. The United States reiterated that in view of the fact that litigation on the matter is currently being processed before the Judiciary, it is not in a position to provide further details.

18. Finally, the United States indicated that it is making efforts to develop solutions to the circumstances that underlie and lead to irregular migration in Central America. In that regard, it highlighted that it is working with regional governments, international organizations, the private sector and civil societies to enhance citizen security, improve governance and boost economic prosperity.

III. PRELIMINARY CONSIDERATIONS

19. Prior to the analysis on compliance with the requirements set forth in the Rules of Procedure, the Commission deems it relevant to highlight that on this occasion it is not called upon to declare whether or not the State violated any rights contained in the American Declaration of the Rights and Duties of Man, nor to grant reparations, if it were the case. In this sense, and within the framework of precautionary measures, the Commission is competent to establish whether the proposed beneficiaries are at risk of serious, urgent and irreparable harm, as enshrined in Article 25 of its Rules of Procedure.

20. Furthermore, the Commission recalls that, under the principle of complementarity, the State, through its domestic authorities, is primarily responsible for protecting the human rights of the persons under its jurisdiction; in this sense, the nature of international jurisdiction is "auxiliary" or "complementary," without replacing it.[13] In the present matter, the Commission has followed the implementation of the "Zero Tolerance" policy and previously expressed its concern through a press release.[14] Subsequently, the Commission learned of an Executive Decree signed on June 20, 2018, which reportedly prevented any further separation of children from their migrant families. Also, after the filing of this request for precautionary measures, the Commission learned that, through the decision of the U.S. District Court for the Southern District of California of June 26, 2018, a series of measures were ordered, aimed at facilitating regular communication between children and their parents and achieving reunification of children in specific time frames, the last having just expired on July 26.[15]

21. In view of the complementary nature of the Inter-American system, the IACHR requested information from the State about the results of the previous measures regarding the situation of risk alleged by the proposed beneficiaries.[16] Consequently, the Commission shall present its determinations in this resolution taking into account that "invoking the principle of complementarity, as a basis to consider that the implementation of precautionary measures is inadmissible, implies that the State concerned must bear the burden of proving that the applicants are not in the conditions established in Article 25 of the IACHR Rules of Procedure. The latter, in view of the fact that the measures adopted by the State have had a substantive impact in reducing or mitigating the risk, so that in assessing the situation, the requirements of seriousness and urgency that call for international intervention to prevent irreparable harm would not be identified."[17]

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IV. ANALYSIS OF THE REQUIREMENTS OF ARTICLE 25 OF THE RULES OF PROCEDURE

22. The precautionary measures mechanism is part of the Commission's function of monitoring compliance with human rights obligations established in Article 106 of the Charter of the Organization of the American States, 1948. These general monitoring functions are established in Article 41 (b) of the American Convention on Human Rights, as well as in Article 18 (b) of the IACHR's Statute. The precautionary measures mechanism is described in Article 25 of the Commission's Rules of Procedure. Pursuant to this article, the Commission grants precautionary measures in serious and urgent situations, and when said measures are necessary to prevent an irreparable harm to people.

23. The Inter-American Commission and the Inter-American Court on Human Rights (hereinafter "the Inter-American Court" or "IAHR Court") have established repeatedly that precautionary and provisional measures have a dual nature, both precautionary and protective. Regarding the protective nature, these measures seek to avoid irreparable harm and to protect the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving legal situations being considered by the IACHR. Their precautionary nature aims to safeguard the rights at risk until the petition in the Inter-American System is resolved. The object and purpose are to ensure the integrity and effectiveness of an eventual decision on the merits, and, thus, avoid any further infringement of the rights at issue, a situation that may adversely affect the useful purpose (*effet utile*) of the final decision. In this regard, precautionary or provisional measures allow the State concerned to comply with the final decision and, if necessary, implement the ordered reparations. Regarding the process of decision making and, according to Article 25(2) of the Rules of Procedure, the Commission considers that:

a. "serious situation" refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the Inter-American System;

b. "urgent situation" refers to risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action; and

c. "irreparable harm" refers to injury to rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation.

24. In analyzing those requirements, the Commission reiterates that the facts supporting a request for precautionary measures need not be proven beyond doubt; rather, the purpose of the assessment of the information provided should be to determine *prima facie* if a serious and urgent situation exists.[18]

25. The Commission recalls that the Inter-American system has made determinations on some processes, such as those related to adoption, guardianship or custody, in which there is a risk of children being separated from their biological parents, and has established that their rights to integrity, identity and family life may be at serious risk, leading to the request for precautionary protection.[19] In such matters, the Commission has learned that the passing of time inevitably constitutes a defining element when assessing the possible existence of a situation of risk, taking into account the protection needs in each particular case based on concrete circumstances. As a matter of fact, the prolonged separation of the children from their family is likely to seriously impact the affective ties with their relatives,[20] resulting in an emotional and psychological distress that could affect their personal integrity by placing the balanced development of their personality at risk.[21] In the same way, the Inter-American system has learned that in the case of children and adolescents, the right to identity is linked to the right to a family life, given the role that family plays in the combination of attributes and characteristics that allow for the individualization of the person in society.[22] Additionally, the concrete circumstances and the specific context of the separation of the children from their family have different impacts on their personal integrity and on their comprehensive and balanced development. Personal factors of the children such as their age and level of development are also important. Both exogenous and endogenous aspects should be duly considered.

26. As regards the integrity of the children, the IACHR has learned that family contributes decisively to the well-being of the children and to their comprehensive and balanced development in the physical, mental, spiritual, moral, psychological and social dimensions. Therefore, the separation of the children from their families may place the development and evolution of their different abilities at risk.[23] In this regard, the Declaration and the American

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Convention, in Articles VI and 17.1 respectively, recognize family as the protective core of childhood and adolescence and confer upon it an important role in guaranteeing the care, well-being and protection of children and adolescents by being the natural space for their growth and development, particularly in the early stages of their lives.[24] The right to a family life established in Article 17.1 of the American Convention on Human Rights and VI of the American Declaration of Rights and Duties of the Man is strictly related to the effective validity of the rights of the children and, therefore, to Article 19 of the American Convention and VII of the American Declaration, because of the place the family has in the life of the children and its protective, care and upbringing role.[25] The Inter-American Commission and the Inter-American Court have indicated that "in principle, the family ought to provide the best protection to the children (. . .)." Moreover, the State has the obligation not only to establish and directly execute protective measures with regard to the children, but also to favor, in the most comprehensive way, the development and the strength of the family.[26] Therefore, children must remain with their families, unless there are compelling reasons, according to their best interests, that may justify the separation from their families. In any case, the separation should be exceptional and temporal.[27]

27. In the case of the separation of children from their families in the migration context, the Inter-American system has established that it may lead to the disintegration of families. Articles 17 of the Convention and VI of the American Declaration establish that, in the right to family protection, as a rule, children must remain with their parents or those who act on their behalf, and that their separation must be prevented, unless the best interest of the children dictates otherwise.[28] In this sense, legal separations of children from their families must only proceed in an exceptional manner if they are duly justified according to their best interest and are temporary.[29] Regarding this last point, the Commission notes that, in its recent General Joint Observations 3/22 and 4/23, the Committee on Migrant Workers and their Families and the Committee on the Rights of the Child have determined that a rupture in the family unit can occur from the expulsion of one or both progenitors, in such a way that separating families due to the violation of immigration laws results in a disproportionate restriction.[30]

28. Additionally, the specific circumstances in migratory contexts which may lead to the separation of children from their families could potentially have negative consequences in their personal integrity and comprehensive and balanced development. The physical and forced separation of the children from their biological parents and/or other close relatives—adults that are their immediate mentors and with whom they have a strict affective relationship of security and confidence—, is already negative. Moreover, if it occurs in a context of uncertainty about the current and future situation, lack of knowledge of their destination, and absence of any kind of contact—all of this in an unknown country and without a supporting network integrated by adults whom the children can trust—, the consequences are even more harmful to their personal integrity and development. The consequences of family separations that are carried out under these circumstances have the following effects on the children affected by it: stress, anxiety, frustration, incomprehension, sadness, depression and trauma that may result in physical, mental, spiritual, moral psychological and social harm on the children, and may even be of a long-lasting and irreversible nature, due to its evolutionary and growing state in all these facets. It is worth mentioning that the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has stated that "the deprivation of liberty of children based on their or their parents' migration status [. . .] may constitute cruel, inhuman and degrading treatment of migrant children."[31]

29. In view of the foregoing, the Commission considers that just as it has stated in the aforementioned events (*see* para. 25), the rights to family protection, personal integrity and identity may require precautionary protection in the migration contexts when the separation, due to the specific circumstances in which they occur, may have an irreparable impact on those rights.

30. In the present matter and in relation to the requirement of seriousness, the Commission observes that at the moment of assessing the seriousness of the allegations submitted by the applicants, there is a series of particular circumstances to take into account when identifying the situation of risk the children proposed as beneficiaries are facing.

31. In that regard, the Inter-American system has learned that "[c]hildren, especially when they are foreigners detained in a different social and legal environment from their own and frequently in a country with a language they do not know, experience a situation of extreme vulnerability."[32] The Commission also highlights that among

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some of the children proposed as beneficiaries there are asylum seekers, which implies that some of the children proposed as beneficiaries could have faced events of persecution or violence that might have led to the migration. Such situation could be considered in the case of the child S.V.C.L who, according to the applicant, escaped from Guatemala with his mother after the murder of his father in February of the present year. Moreover, the adolescent K.A.M.A., due to his reported hearing impairment, may require the support or reasonable adjustments for his adequate integration in society, in the context of his migratory process, facing a more noticeable vulnerability situation.[33] Likewise, the impact would be particularly different in the case of the children proposed as beneficiaries, whose identity is intrinsically related to their belonging to an indigenous community, given that the balanced development of their personality, according to their world view, requires that the children be educated and raised within their natural and cultural context, linked among many factors to their culture, religion and language,[34] matters in which the family plays a vital role.

32. According to the information provided by the applicants, to date, as a result of the "Zero Tolerance" policy, the children, proposed as beneficiaries, who are facing the abovementioned situations of vulnerability, are separated from their father or mother accompanying them, who, except in the case of Ms. Lopez de Coc –who allegedly achieved it only on one occasion–, still had not succeeded in establishing any means of contact with them. Additionally, the Commission notes that the parents are still detained, and there is no information about the specific location of the totality of the children of the proposed beneficiaries, and their parents have not been informed whether there is a plan of the part of the competent authorities to proceed to their reunification and even about their general state of health or physical and psychological well-being.

33. The Commission observes that according to the information provided by the State, by means of the Executive Order, the separation of the families has been avoided and the reunification of those who were separated is reportedly in process. Notwithstanding the foregoing, and in spite of the ruling by the U.S. District Court for the Southern District of California of June 26, 2018 and the overdue deadline for the reunification,[35] out of the 2551 children affected, 572 have still not been reunified.

34. The Commission takes note that the United States did not provide information on the specific situation of the persons proposed as beneficiaries, nor on whether the reunification has effectively been planned for the short term, if there is a timeline for reunification in place, or if effective means of communication have been enabled. Moreover, the United States has not provided detailed information on the specific circumstances of the proposed beneficiaries, their health or detention conditions. According to the disaggregated information provided by the State, the parents of 410 children may already be outside of the United States, and no detailed information was provided indicating in which countries they may be or how the State intends to achieve reunification in the short term. In effect, the Commission notes with deep concern that, according to the State report, such reunification may be impossible and the children may be handed over to a sponsor in the United States. Even though most of the times they are given to a family member, it is not always the case.

35. The Commission regrets the lack of specific information by the State, which is particularly relevant when assessing the seriousness of the situation of risk and takes into consideration that the information provided by the State is not sufficient to clarify whether some of the parents and children proposed as beneficiaries have been deported separately, even before the decision of June 26, 2018, making the reunification of these families difficult or impossible. Regarding this aspect, the applicants do not have information on the situation of Bol Pauu and his son, of Ms. de la Cruz and her three children, neither of the situation of Mr. Chub Cucul and his son, and it is particularly concerning that the investigations carried out with the ORR allegedly revealed that the child has not been located in any of the shelters.

36. Consequently, in the abovementioned conditions described by the applicants and, given that the State was unable to provide a sufficient explanation to dismiss such allegations, the Commission concludes that the rights to life and personal integrity and, especially in the case of the children, their right to identity is *prima facie* in a situation of risk, and that the requirement of seriousness is met. By taking this determination, the Commission takes into account the risk as a whole, the possible loss of the relationship between the children and their biological family as a possible result of the separation, in the absence of concrete information provided by the State regarding their situation, as well as the actual possibilities of reunification. Moreover, in some cases, a deportation may have

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been materialized separately, which adds to the emotional and psychological impact that such situation of uncertainty regarding the reunification of the children may have in a defining moment in which family plays an important role in the development of their respective personalities and identities.

37. As regards the requirement of urgency, the Commission observes that in light of the situation of risk described, the State adopted measures in accordance with the judicial decision of June 26, 2018 which might mitigate the risk, given that the ruling ordered the immediate adoption of the necessary measures to facilitate regular communication between children and their parents, telephone contact and others that would allow for reunification within the specific time-frames. In view of the complementarity of the Inter-American system, the Commission deemed it pertinent to request information from the State, particularly on the progress and efficiency of the ruling.

38. The Commission notes that even though the State has taken important steps towards mitigating the damage caused, the time-limit to reunify the children affected by the "Zero Tolerance" policy expired on June 26, 2018, and 572 are still awaiting reunification. In light of the alleged lack of effectiveness of the measures adopted by the State and the lack of explanation on the exact procedures by which the State intends to reunify the proposed beneficiaries, the Commission considers that the requirement of urgency is met due to the imminent risk of an impact on their rights in face of the lack of information on the whereabouts of some of the proposed beneficiaries, the alleged continuity of separations without specific information about when reunification will be carried out, even though the time-limit of the judicial decision of June 26, 2018 has expired. In such circumstances, the immediate adoption of measures to safeguard the rights of the proposed beneficiaries is required.

39. Regarding the requirement of irreparability, the Commission considers that it is fulfilled, given the severe impact that the situation described may have on personal integrity and the possible loss of family relationships that are part of family rights, which additionally, in the case of children and due to its own severity and impact, may inevitably persist and extend to adult life.

V. BENEFICIARIES

40. The Commission declares that the beneficiaries of the present precautionary measure are all the people individualized in this proceeding as members of the aforementioned five migrant families: Ms. Vilma Aracely López Juc de Coc and her son S.V.C.L.; Mr. Antonio Bol Pauu and his son R.B.S.; Ms. María Andrés de la Cruz and her three children D.P.A., G.A.P.P. and D.M.P.A.; and Mr. Dagoberto A. Melchor Santacruz and his son K.A.M.A.

VI. DECISION

41. The Commission considers that this matter meets *prima facie* the requirements of seriousness, urgency and risk of irreparable harm set forth in Article 25 of its Rules of Procedure. Consequently, the Commission requests that the United States:

> a) Adopt the necessary measures to safeguard the rights to family life, personal integrity and identity of Ms. Vilma Araceli López de Coc and the other proposed beneficiaries duly identified in this request. Particularly, guaranteeing that such rights are safeguarded by means of the reunification of the abovementioned families and the best in accordance with the best interest of the children;
>
> b) Adopt the necessary measures, while the reunification is carried out, to immediately guarantee an appropriate, free, and regular communication between the beneficiaries and their families, in accordance with their best interests. Moreover, with the aim of protecting their rights, provide medical and psychological assistance, among others that might be necessary such as consular assistance. Also, provide interpreting services when necessary so that the proposed beneficiaries know their rights and have a good understanding of their situation and destination;
>
> c) In case any of the proposed beneficiaries was deported separately from their children, adopt immediately the necessary measures in the framework of international cooperation to guarantee their reunification, taking into account the child's best interest and the necessary support and care;

d) Suspend any migration procedure that may result in the separation of the children from their parents; and

e) Agree upon the measures to be adopted regarding the proposed beneficiaries and their representatives.

42. The Commission also requests that the Government of the United States inform the Commission within a period of 10 days, as from the date of notification of the present resolution, about the adoption of the precautionary measures that have been consulted with and agreed upon and to periodically update this information.

43. The Commission highlights that, in conformity with Article 25(8) of its Rules of Procedure, the granting of precautionary measures and their adoption by the State do not constitute a prejudgment on the possible violation of rights safeguarded in the American Declaration and other applicable instruments.

44. The Commission requests that the Secretariat of the Inter-American Commission notify the United States and the applicants of the present resolution.

45. Approved on the 16th day of the month of August, 2018 by: Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, First Vice-President; Luis Ernesto Vargas Silva, Second Vice-President; Joel Antonio Hernández García, Antonia Urrejola and Flávia Piovesan, members of the IACHR.

María Claudia Pulido
Assistant Executive Secretary

ENDNOTES

1 U.S. Department of Justice, Memorandum on Zero Tolerance for Offenses under 8 U.S.C. §1325(a), April 6, 2018. Available at: https://www.justice.gov/opa/press-release/file/1049751/download. *See also*, 8 U.S.C. §1325(a): Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both. Available at: http://uscode.house.gov/browse.xhtml.

2 According to the applicants, Mr. Santacruz received preparation for a credible fear interview, but there is no further information as to whether it was already conducted and/or succeeded. Also, there is no information concerning the rest of proposed beneficiaries in this regard, except for Ms. López Juc de Coc.

3 Houston Chronicle, "Immigrant families separated at the border struggle to find each other," May 24, 2018. Available at: https://www.houstonchronicle.com/news/houston-texas/houston/article/Immigrant-familiesseparated-at-border-struggle-12938759.php. *See also*, Washington Post, "This is what's really happening to kids at the border," (May 30, 2018). Available at: https://www.washingtonpost.com/news/monkey-cage/wp/2018/05/30/this-is-whats-really-happening-to-kids-at-the-border/

4 Applicants indicated that they interviewed additional 376 families at the U.S.-Mexico border, claiming that at least two children were deported without their parents, and three parents without their children, all of whom were already separated upon entry. Also, they reported that eight families were detained in residential detention centers, "[. . .] possibly with their children [,]" and confirmed that four families have been reunited and released.

5 Initially, she was reportedly detained at the Laredo Detention Center, Texas. She was not allowed to see her son since they were separated.

6 According to the applicants, parents may make phone calls from Monday to Friday at specific times, but they would have to pay for the calls.

7 No details were provided as if he was temporarily held at a shelter pending an eventual placement under a relative's custody.

8 U.S. Department of Homeland Security, "Zero-Tolerance Prosecution and Family Reunification," June 23, 2018. Available at: https://content.govdelivery.com/accounts/USDHS/bulletins/1f98ad8.

9 According to the injunction, the plaintiffs sought a certification of class, which was accepted by the judge with minor modifications. It is thus defined to include: "All adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the [DHS], and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent a determination that the parent is unfit or presents a danger to the child [. . .]. The class does not include parents with criminal history or communicable disease, or those apprehended in the interior of the country or subject to the [Executive Order] [. . .]."

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10 *Mortlock v. United States*, Case No. 12.534, Report No. 63/08, Admissibility & Merits, July 25, 2008, para. 78.

11 According to the State, approximately $2.6 billion were destined to foreign assistance to address the security, governance, and economic challenges in Central America for Fiscal Years 2015 to 2018.

12 The report indicates the following data: "[t]otal number of possible children of potential class members originally identified: 2,551[. . .]"; "[c]hildren remaining in care with ORR, where the adult associated with the child is either not originally eligible for reunification or not available for discharge at this time: 572." Among these children the report states: "adult outside the US: 410 children."

13 IACHR, Francisco Javier Barraza Gómez regarding Mexico (MC-209-14), Resolution of August 15, 2017, available in Spanish at: http://www.oas.org/es/cidh/decisiones/cautelares.asp

14 IACHR, "IACHR Expresses Concern over Recent Migration and Asylum Policies and Measures in the United States," press release of June 18, 2018. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/130.asp

15 The decision made on June 26, 2018, establishes, among others, that unless it is determined that the parent is unfit or poses a threat to the child, or unless he/she affirmatively, consciously and willingly refuses to reunite with the child, "(a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order; and (b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order".

16 In a note dated July 23, 2018, the Commission requested from the State information on whether the proposed beneficiaries had been reunified and on whether the ruling of June 26, 2018 issued by the U.S. District Court for the Southern District of California had been implemented in favor of the proposed beneficiaries.

17 IACHR, Resolution 31/2017, *Francisco Javier Barraza Gómez regarding México* (MC-209-14), August 15, 2017, para. 22, available at: http://www.oas.org/es/cidh/decisiones/cautelares.asp. Se also, IACHR, Resolution 32/2017, *Santiago Maldonado regarding Argentina*, August 22, 2017, para. 16, available at: http://www.oas.org/es/cidh/decisiones/pdf/2017/32-17MC564-17-AR.pdf; IACHR, *Comprehensive Protection Policies for Human Rights Defenders*, December 29, 2018, para. 68.

18 In that regard, for instance, in relation to the provisional measures, the Inter-American Court has considered that this standard requires a minimum of details and information that allow for the *prima facie* assessment of the situation of risk and urgency. IACHR, *Matter of the children and adolescents deprived of their liberty in the "Complexo do Tatuapé" of the Fundação CASA*. Request for extension of precautionary measures. Provisional Measures regarding Brazil. Resolution of the Inter-American Court of Human Rights of July 4, 2006. Considerandum 23.

19 IAHR Court, Resolution of the Inter-American Court of Human Rights of July 1, 2011, Precautionary Measures regarding Paraguay. Matter of L.M., considerandum 16.

20 IACHR, Request for Precautionary Measures to the Inter-American Court of Human Rights regarding boy L.M., May 18, 2011, para. 54. On this matter, the Commission has learned that "the age factor and the passing of time are vital in the establishment of affective bonds, the creation of family relationships, personality development and the development of the child's identity, particularly at an early age. Consequently, there is a duty of exceptional diligence given that the time factor may cause irreparable harm to the boy." IACHR, *The right of children to a family. Alternative care. Ending institutionalization in the Americas*. October 17, 2015, para. 316.

21 IACHR Court, Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures regarding Paraguay. L.M. Matter, Considerandum 14 and 18.

22 The Inter-American Judicial Committee has considered that the right to identity is a key human right that can be conceptualized, in general, as a group of attributes and characteristics that allow the individualization of the person in society and, in that sense, includes several other rights established in the Convention, according to the subject of law implied and the circumstances of the matter. Inter-American Judicial Committee, Opinion "about the scope of the right to identity," order IAJC/doc. 276/07 rev. 1, of August 10, 2010. The IAHR Court and the Commission have also established the relation that it has with the right to family life. IAHR Court, Order of the Inter-American Commission on Human Rights of July 1, 2011, Provisional Measures regarding to Paraguay, L.M. Matter, Considerandum 15.

23 *See*, IACHR *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección*, para. 338 and ss. (Available in Spanish)

24 *See*, IACHR, *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección*, para. 388 and ss. (Available in Spanish). IACHR, *Report on the Rights of Children to a Family. Alternative care. Ending institutionalization in the Americas,* OEA/Ser. L/V/II. Doc.54/13, 2013, particularly para. 49 to 64. (Available in Spanish)

25 IACHR, *Hacia la garantía efectiva de los derechos de niñas, niños y adolescentes: Sistemas Nacionales de Protección*, para. 389. IACHR, *Informe sobre el Derecho del niño y la niña a la familia. Cuidado alternativo. Poniendo fin a la institucionalización en las Américas*, para. 57. (Available in Spanish)

26 IAHR Court. *Legal condition y and human rights of the children*. Advisory opinion AO-17/02, para. 66. *See also*, IACHR, *Informe sobre el Derecho del niño y la niña a la familia. Cuidado alternativo. Poniendo fin a la institucionalización en las Américas*, para. 42 and 53. In the context of the universal system, the Human Rights Committee of the United Nations has also expressly related the protection that the family deserves, established in Article 23.1 of the International Pact on Civil and Political Rights in compliance to the duty of protection of the children due to their condition, established in Article 24.1 of the same Pact, Human Rights Committee, General Observation No. 17, Article 24–Rights of the children, 35 period of sessions, U.N. Doc HRI/GEN/1/Rev.7 (1989). And General Observation No.19. Article 23 – The family, 39 period of sessions, U.N. Doc. HRI/GEN/1/Rev.7 (1990).

27 IAHR Court. *Legal condition y and human rights of the children*. Advisory opinion AO-17/02 August 28, 2002. Series A No. 17, resolution item No. 5 and para. 77. *See also*, IACHR, *Report on the Rights of Children to a family. Alternative care. Ending institutionalization in the Americas*, OEA/Ser.L/V/II. Doc.54/13, 2013, para. 65 to 75. (Available in Spanish)

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28 IAHR Court. *Rights and guarantees of children in the migration context and/or in need of international protection*. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 177

29 IAHR Court. *Rights and guarantees of children in the in the migration context and/or in need of international protection*. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 273. Quoting Matter Fornerón and daughter Vs. Argentina. Merits, Reparations and Costs. Order of April 27, 2017. Series C No. 242, para. 116

30 Joint general observation No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and their families and No. 23 (2017) of the Committee on the Rights of the Child on the duties of the States regarding children's human rights in the context of international migration in the countries of origin, transit, destination and return. CMW/C/GC/4, CRC/C/GC/23, para. 29.

31 Joint general comment No. 4 (2017) of the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families and No. 23 (2017) of the Committee on the Rights of the Child on the obligations of States regarding human rights of children in the context of international migration in countries of origin, transit, destination and return. CMW/C/GC/4, CRC/C/GC/23, para. 9

32 IAHR Court. *Rights and guarantees of children in the in the migration context and/or in need of international protection*. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 190.

33 The IACHR has referred to the need for a model of social integration for people with disabilities under conditions of equality and under the principle of non-discrimination within the national systems of comprehensive protection of the rights of children and adolescents, with the purpose that they can overcome any obstacle or limitation that exists socially and manage to exercise their rights effectively. IACHR, Request for Precautionary Measures No. 376-15, Resolution 38/2016, Irene regarding Argentina, July 7, 2016, para.24.

34 IAHR Court. *Rights and guarantees of children in the in the migration context and/or in need of international protection*. Advisory Opinion AO-21/14 of August 19, 2014. Series A No. 21, para. 168.

35 The decision made on June 26, 2018, establishes, among others, that unless it is determined that the parent is unfit or poses a threat to the child, or unless he/she affirmatively, consciously and willingly refuses to reunite with the child, "(a) Defendants must reunify all Class Members with their minor children who are under the age of five (5) within fourteen (14) days of the entry of this Order; and (b) Defendants must reunify all Class Members with their minor children age five (5) and over within thirty (30) days of the entry of this Order."

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