

**BRIEF ANALYSIS:
THE HOMELAND SECURITY ADVISORY COUNCIL'S
CUSTOMS AND BORDER PROTECTION FAMILIES AND CHILDREN
CARE PANEL FINAL EMERGENCY INTERIM REPORT**

On April 16, 2019, the Homeland Security Advisory Council's (HSAC) Customs and Border Protection (CBP) and Family and Children Care Panel published its "Final Emergency Interim Report"ⁱ outlining several recommendations regarding care and processing for asylum seeking families and children. Tahirih opposes many of the recommendations for being at odds with long-standing, expert child protection principles.ⁱⁱ Tahirih's brief analysis of the recommendations are as follows:

1. No Flores protections for accompanied children/family units

Tahirih firmly opposes this recommendation, which will result in prolonged detention of families. The report omits any mention of proven effective, less costly alternatives to detention, instead presenting incarceration as the only option.ⁱⁱⁱ Incarceration is a deliberate, punitive policy choice designed to deter families from fleeing horrific, life threatening violence. International human rights principles that the US has pledged to uphold as a Refugee Convention signatory specifically denounce the use of punitive measures to dissuade refugees from seeking protection.^{iv} The most vulnerable families will flee regardless, so their suffering should be minimized. Access to counsel and therefore, due process, is also very limited while in immigration detention.

The report cites the great risk to children of "multiple medical problems, which include but are not limited to, dehydration, malnutrition, infections, psychological trauma, physical injuries and all aspects of child maltreatment" as they are fleeing for their lives. Despite the report's purported concern for their well-being, the report simultaneously advocates increased incarceration of accompanied children. It is well-known that incarceration of children for any length of time causes significant trauma to them. Emotional trauma from incarceration is a near certainty, leading to physical conditions particularly harmful to children both in the short and long term (e.g., loss of appetite, sleep disturbance, stunted growth/failure to thrive, difficulty with focus/school, job outlook, etc.).^v

2. Designate Mexico as a "safe third country" –i.e., barring asylum for those passing through Mexico on the way to the U.S.

Tahirih unequivocally opposes this recommendation – it is well known that Mexico is not a safe country for asylum seekers. This recommendation is tantamount to having many vulnerable asylum seekers receive no protection at all. Women and children will suffer the most, due to the prevalence of gender-based violence, with limited state protection for rape, domestic violence, human trafficking, and related crimes.^{vi} Many of Tahirih's clients have endured brutal

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sexual assaults in Mexico, while en route to the US to seek asylum for persecution in their home countries. One woman Tahirih spoke with was attacked after fleeing her home country by her persecutor's associate who managed to locate her. In addition, vulnerable populations will have little if any access to pro bono or other counsel in Mexico.

3. Full adjudication of asylum claims within 20 days

The solution to the extreme backlog and lengthy adjudication period for asylum applications is not to provide too little time to effectively prepare one's case. 20 days is woefully inadequate for an asylum seeker to secure counsel, assemble all evidence, ensure accurate translation of documents, and meaningfully present testimony regarding highly re-traumatizing and sensitive events. The time allowed should be reasonable and not curtail due process. This policy will result in summary denials of legitimate cases, and the unlawful refoulement of refugees to face severe harm. Again, women and girls will endure the most severe harm from this policy, because gender-based asylum cases are currently subject to very complex, convoluted, and inconsistent legal analysis by adjudicators.

4. Require border crossers to apply at a point of entry unless there are extraordinary circumstances precluding it

Tahirih supports policies that promote a regularized, orderly process for applying for asylum at the border. While such a system is desirable, the reality is that the most vulnerable refugees will flee for their lives in whatever manner they are able to. We should not further punish them for doing so by summarily denying them safe haven.

The United States, in keeping with international human rights principles, has traditionally recognized that it is inappropriate to penalize refugees for unauthorized entry for the purpose of applying for asylum. Congress expressly and unequivocally recognized on a bipartisan basis the dire reality refugees face while escaping persecution in enacting the Refugee Act of 1980 allowing individuals to apply for asylum regardless of where or how they enter the U.S. For further analysis, please see Tahirih's [comments](#)^{vii} on recently proposed asylum regulations and [talking points](#)^{viii} related to the ban on seeking asylum if one entered the US between ports of entry.

5. Narrow grounds for asylum claims – the Attorney General should use his authority to limit grounds for asylum claims to be coterminous with, but not exceed U.S. treaty obligations

The grounds for asylum are already very limited. Our domestic asylum laws are currently coterminous with US treaty obligations, and implementation and adjudications of these laws currently fall short of our treaty obligations.

6. Establish a secure Refugee Processing Center (RPC) Facility in Guatemala so the U.S. can adjudicate Northern Triangle cases there

Depending on how it is implemented, this proposal would promote safety for asylum seekers by allowing them to avoid the perilous journey to the US. However, RPCs must be constructed and managed so as to ensure the safety and welfare of vulnerable children and families. Access to legal orientation programs and pro bono counsel in Guatemala is also critical to ensuring due process for those applying at the RPC. Adjudications must be done thoroughly yet promptly, to

minimize the need for asylum seekers to remain in harm's way. Without these and other safeguards, applicants will not have meaningful access to the asylum process.

7. Video-monitoring surveillance should be installed at all Points of Entry, Border Patrol stations and RPCs with multiple warnings of this surveillance to all children in Customs and Border Protection custody to assist in the prevention of situational child sexual abuse

Tahirih strongly supports measures to promote accountability and prevention of child sexual abuse. Such measures must be implemented in a way that maximizes children's privacy and well-being, to avoid re-traumatization and other unintended consequences to this highly vulnerable population. Those tasked with investigating allegations of abuse must have significant relevant experience and extensive expertise in trauma-informed and child-appropriate interviewing techniques, and the unique dynamics of sexual assault.

8. Establish temporary Regional Processing Centers (RPCs) for all family units along the SW border; consideration also should be given to the temporary creation of a unit of government (EOIR) funded immigration counsel (similar to public defenders) as utilized in the 2014-15 surge

Additional detention space is contemplated as part of RPC construction, and Tahirih is firmly opposed to measures that involve incarceration of families. Rather, DHS should choose to resume use of cost-effective alternatives to detention that are proven to be successful at ensuring immigration court appearance rates.

However, Tahirih fully supports government funded immigration counsel for all asylum seekers. Immigration laws are highly technical, and the stakes are very high for those fleeing torture and possibly death at home. Representation is critical for asylum seekers to have complete, meaningful access to our asylum system. This is particularly true of women presenting complex gender-based asylum claims.

ⁱ https://www.dhs.gov/sites/default/files/publications/19_0416_hsic-emergency-interim-report.pdf

ⁱⁱ <https://www.children.org/child-protection-policy>;
<https://www.childwelfare.gov/topics/management/reform/soc/history/principles/>; <https://www.unicef.org/child-rights-convention>

ⁱⁱⁱ https://www.aclu.org/sites/default/files/field_document/aclu_atd_fact_sheet_final_v.2.pdf

^{iv} Article 31, United Nations Convention Relating to the Status of Refugees available at: <https://www.unhcr.org/en-us/3b66c2aa10>

^v <https://cdn.americanprogress.org/content/uploads/2018/07/12055110/Family-Incarceration-brief1.pdf>

^{vi} <https://www.refworld.org/docid/59c116e24.html>

^{vii} <https://www.tahirih.org/wp-content/uploads/2019/01/Tahirih-Asylum-Regulations-Comments-1.8.19.pdf>

^{viii} <https://www.tahirih.org/wp-content/uploads/2018/11/Asylum-Ban-talking-points.pdf>