

SUBMITTED INPUT

An NGO input to the Special Rapporteur for the Human Rights of Migrants to the Office of the United Nations High Commissioner for Human Rights report on pushback practices and their impact on the human rights of migrants

SUBMITTED BY

Center for the Human Rights of Children

Loyola University Chicago

25 E. Pearson St.

Chicago, IL 60611USA

(312)-915-7541 (T)

www.luc.edu/chrc

Katherine Kaufka Walts, JD, Director,

kkaufkawalts@luc.edu

Sarah J. Diaz, JD, LL.M, Associate Director,

sdiaz10@luc.edu

Malachy Schrobilgen, Second Year Law

Student, Children's Rights Legal Scholar

mschrobilgen@luc.edu



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Input for the Special Rapporteur’s Report on Pushback Practices and their Impact on the Human Rights of Migrants, Submitted by the Center for the Human Rights of Children, Loyola University Chicago School of Law et al., February 1, 2021

I. Introduction

The Center for the Human Rights of Children, in collaboration with Kids in Need of Defense (KIND), the Women’s Refugee Commission, and the Young Center for Immigrant Children’s Rights (“Young Center”), submits this input in response to the call for submissions made by the Special Rapporteur on the Human Rights of Migrants to inform the forthcoming report to the 47th session of the Human Rights Council regarding the use of “pushback” practices and their impact on the human rights of migrants. This input will focus specifically upon the implementation of pushback policies by the United States Government (“USG”) along the border between the United States and Mexico and the impact those policies have had, and continue to have, on the rights of migrant children. The signatories to this input are national and international organizations that provide a range of services related to migrant children, including direct legal services, social services, advocacy, research and scholarship.

Children are uniquely vulnerable, due to their age, development, and dependence on adults for their safety and well-being. The plight of migrant children has been tied to that of all migrants—perpetuating the unfortunate tradition of treating migrant children merely as adults in miniature or merely as an invisible extension of their migrant guardian. Migrant children must be given special attention, and all decisions concerning migrant children must be firmly centered around the best interests of the child. This input calls attention to the ways in which the USG has specifically targeted and exploited the unique vulnerabilities of migrant children to achieve its unlawful policy goals. The result has yielded state-sanctioned violence against migrant children’s physical, mental, emotional, and developmental well-being.

II. The Suppression of Peremptory Norms Relating to All People, Especially Children

This input specifically addresses the ways in which USG pushbacks have violated peremptory norms including—pursuant to each pushback mechanism—the right of migrant children not to be returned to persecution and harm under the *jus cogen* imperative of non-refoulement.¹ We also evaluate the ways in which USG pushbacks violate *jus cogens* principles of international law, such as a child’s inherent right to life, survival and development² and to be free from torture.³ All

¹ *United Nations Protocol Relating to the Status of Refugees* art. I, 31 January 1967, *United Nations Treaty Series*, vol. 19, No. 6223, [hereinafter “Refugee Protocol”]; *Convention Relating to the Status of Refugees* art. 33(1), 28 July 1951, *United Nations Treaty Series*, vol. 189, No. 150, p. 152, [hereinafter “Refugee Convention”]; see also Refugee Act of 1980 § 208, 8 U.S.C. § 1158, (c)(1)(A) (2018) (“In the case of an alien granted asylum... the Attorney General shall not remove or return the alien to the alien’s country of nationality or, in the case of a person having no nationality, the country of the alien’s last habitual residence).

² General Assembly resolution 44/25, *Convention on the Rights of the Child*, 20 November 1989, art. 6 [hereinafter “UN CRC”].

³ Under the Convention Against Torture – which the United States has ratified and incorporated, in part, into domestic law – torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ...intimidating or coercing him or a third person.” See *Convention against*

pushback mechanisms violate the customary international right of the child to have their best interests considered.⁴ Each mechanism, and the manifest violations of children’s rights that flow from them, has resulted in immense physical, emotional, developmental, and traumatic harm to migrant children.

III. United States Government Pushbacks: A Case Study in the Need for Enhanced Protections for Migrant Children

The following provides a brief synopsis of specific policies and practices taken by the USG which are identified as “pushback” mechanisms directly infringing upon the rights of child migrants. This synopsis is not an exhaustive discussion of the pushbacks implemented by the USG, but merely a selection of some of the most violative and harmful practices that have been used.⁵

A. USG Pushback Mechanism: Family Separation Under “Zero Tolerance”

Beginning in January of 2018, advocates began decrying an informal practice of separating migrant children from their family at the U.S.-Mexico border.⁶ In April of 2018, the government formalized the unthinkable practice of separating every single parent and child detained at or along the U.S. borders or at ports of entry.⁷ The policy publicly called for prosecuting immigration offenses including unauthorized entry.⁸ The collateral consequence of this policy was the adoption of *pro forma* family separation in order to carry out the prosecutions. While family separation was said to be incidental to the Zero Tolerance Policy, parents and children were separated in all cases

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, *United Nations Treaty Series*, vol. 1465, No. 85, p. 113.

⁴ UN CRC, at art. 3, *supra* note 2; See generally, U.N. Children’s Fund [UNICEF], *Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries*, available at <https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>. (Recognizing that every country in the world, apart from the United States, has ratified the UN CRC, and that pursuant to a UNICEF study of the UN CRC, “[t]he right of the child to have their best interests considered is the single most universally adopted principle of the CRC,” the right of a child to have their best interests considered has become a preemptory norm as recognized by treaty, custom and general principles of law recognized by civilized nations.)

⁵ See National Immigrant Justice Center, *A Timeline of the Trump Administration’s Efforts to End Asylum*, (last accessed Jan. 24, 2021) available at <https://immigrantjustice.org/issues/asylum-seekers-refugees>.

⁶ Sarah J. Diaz, *Parent-Child Border Separations Violate International Law: Why it matters and what can be done to protect children and families*, GEO. HUM. RTS. INST.: PERSP. ON HUM. RTS. 6 (2018) available at <https://georgetown.app.box.com/s/dunc9o3twzy6obc03oh5wandfl9cnwng>.

⁷ See Memorandum for Federal Prosecutors Along the Southwest Border, OFFICE OF THE ATTY GEN., (Apr. 6, 2018) available at <https://www.justice.gov/opa/press-release/file/1049751/download> (“Zero-Tolerance” Policy Memo).

⁸ *Id.* These offenses are laid out at 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.”

including cases in which the parent properly presented themselves for asylum at the border or port of entry—cases in which there were no grounds for prosecution.⁹ This policy inflicted unquantifiable, irreparable harm¹⁰ upon thousands of children and their parents and led to a fraught reunification process once it was finally ended. Hundreds of parents were deported without their children and hundreds of these children remain separated from their parents to this day.¹¹

This policy not only violated the due process rights of both parents and their children,¹² but it was denounced by the U.S. medical community as a form of torture perpetrated against children.¹³ The infliction of pain and suffering to children was not simply an unfortunate side effect of stricter immigration policies—it was the targeted, intentional impact of the USG pushback mechanism.¹⁴ The USG used family separation to both deter migration and coerce children and families to abandon their claims for asylum in exchange for promises of reunification.¹⁵

⁹ Camila Domonoske & Richard Gonzales, *What We Know: Family Separation And 'Zero Tolerance' At The Border*, NAT'L PUBLIC RADIO (June 19, 2018), available at <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>. 36Id.

¹⁰ See Sarah A. MacLean *et al.*, *Mental Health of Children Held at a United States Immigration Detention Center*, 230 SOCIAL SCIENCE & MED. at 303-08, (June, 2019) available at <https://www.sciencedirect.com/science/article/abs/pii/S0277953619302138?via%3Dihub>. Trauma resulting from family separation can severely harm a child's development and create harmful consequences that last into adulthood. Research shows that children who experience more adverse experiences during childhood, such as separation from family and detention, are statistically more likely to experience negative behavioral and physical health outcomes as adults.

¹¹ See Caitlin Dickerson, *Parents of 545 Children Separated at the Border Cannot be Found*, N.Y. TIMES (Oct. 21, 2020) available at <https://www.nytimes.com/2020/10/21/us/migrant-children-separated.html>.

¹² See *Ms. L. v. U.S. Immigration and Customs Enf't*, 310 F. Supp. 3d 1133, 1144-46 (S.D. Cal. 2018), modified by 330 F.R.D. 284 (S.D. Cal. 2019); Compl. ¶ 62 (citing *Ms. L.*) (“A practice of this sort [family separation] implemented in this way is likely to be ‘so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,’ interferes with rights ‘implicit in the concept of ordered liberty’ and is so ‘brutal’ and ‘offensive’ that it does not comport with traditional ideas of fair play and decency”).

¹³ Charles Oberg *et al.*, *Treatment of Migrant Children on the US Southern Border Is Consistent With Torture*, 147 PEDIATRICS 1, (Jan., 2021) available at <https://pediatrics.aappublications.org/content/pediatrics/147/1/e2020012930.full.pdf>.

¹⁴ Danielle Diaz, *Kelly: DHS is Considering Separating Undocumented Children from their Parents at the Border*, CNN (Mar. 7, 2017), available at <http://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html>. (stating that the government was considering separations “in order to deter more movement... [the children] will be well cared for as we deal with their parents...”); see also David Shepardson, *Trump Says Family Separations Deter Illegal Immigration*, REUTERS (Oct. 13, 2018) available at <https://www.reuters.com/article/us-usa-immigration-trump/trump-says-family-separations-deter-illegal-immigration-idUSKCN1MO00C>.

¹⁵ See Letter to John V. Kelly, Acting Inspector Gen., Dep't of Homeland Sec., *Re: The Use of Coercion by U.S. Department of Homeland Security (DHS) Officials Against Parents Who Were Forcibly Separated From Their Children*, from the American Immigration Council (Aug. 23, 2018), available at https://www.americanimmigrationcouncil.org/sites/default/files/general_litigation/the_use_of_coercion_by_u.s._dept_of_homeland_security_officials_against_parents_who_were_forcibly_separated_from_their_children_public_fin_0.pdf.

Given the extensive press coverage that the family separation crisis received, rather than present examples here, the signatories have compiled examples of this atrocity in an appendix to this input.¹⁶

B. USG Pushback Mechanism: Migrant Protection Protocols (MPP) or “Remain in Mexico”

In January 2019, the USG began to implement a policy known as the “Migrant Protection Protocols” which returns non-Mexican asylum seekers to Mexico for the duration of their immigration proceedings.¹⁷ Under this policy, tens of thousands of asylum seekers have been forced to wait in “MPP camps” composed of crude, makeshift tents and plagued by crime, abuse, and poverty.¹⁸ As of October 2019, at least 16,000 children and nearly 500 infants have been forced to wait in these conditions. There have been at least 1,314 publicly reported cases of murder, rape, torture, kidnapping, and assault against those who have been subjected to MPP.¹⁹ There have been over 300 cases of children who have been kidnapped or nearly kidnapped.²⁰ The introduction of the COVID-19 pandemic has only increased the dangers faced by migrant children under MPP.

MPP has fostered the creation of conditions which pose direct threats to the life, survival and development of migrant children. Families are forced into the position of sending their children to the U.S. alone to pursue their asylum claims in relative safety.²¹ MPP courts lack adequate protections necessary to carry out a legitimate legal proceeding on behalf of an asylee, especially

¹⁶ See also, Policy Report of KIND at Appendix B; see also Policy Report of the Young Center at Appendix B.

¹⁷ See Policy Guidance for Implementation of the Migrant Protection Protocols, U.S. DEP’T OF HOMELAND SEC., (Jan. 25, 2019) available at https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf; see also *Innovation Law Lab v. Nielsen*, 19-cv-00807, Doc. 73, (N.D. Cal. 2019).

¹⁸ See Human Rights First, *Publicly Reported MPP Attacks*, (Dec. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks12.15.2020FINAL.pdf>; see also Kristina Cooke *et al.*, *Exclusive: U.S. Migrant Policy Sends Thousands of Children, Including Babies, Back to Mexico*, REUTERS (Oct. 11, 2019) available at <https://www.reuters.com/article/us-usa-immigration-babies-exclusive/exclusive-u-s-migrant-policy-sends-thousands-of-children-including-babies-back-to-mexico-idUSKBN1WQ1H1>. (Note here that the USG did not create or fund these camps for migrants. Nor does the USG make any efforts to protect migrants. Instead, migrants created their own encampment which has relied largely on humanitarian assistance for survival. These camps lack food, access to medical care, water and education.)

¹⁹ See Human Rights First, *Publicly Reported MPP Attacks*, (Dec. 2020) available at <https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks12.15.2020FINAL.pdf>.

²⁰ See Women’s Refugee Commission, *Chaos, Confusion and Danger: The Remain in Mexico Program in El Paso*, at 3-4 (May 6, 2019) available at <https://www.womensrefugeecommission.org/research-resources/chaos-confusion-and-danger/> [hereinafter “WRC Report on MPP”].

²¹ *Id.*

for a child.²² The superficial proceedings designed under MPP undermine the basic guarantee of due process and the obligation of non-refoulement.²³

This state-sanctioned violence has devastated the lives of children, as evidenced at Appendix A. Consider five-year-old “Juan” from Guatemala who, along with his mother, was forced to live in Matamoros MPP camp:

Juan, a five-year-old Honduran boy who became sick and, along with his mother, was kidnapped in the Matamoros encampment, provides another example of the danger of being forced to wait in Mexico. Juan’s mother was sold to and raped by a human trafficker as a child. She escaped after four years, and gave birth to Juan. He became her joy, and her sole mission was to protect him from the abuse and dehumanization that she experienced as a child. In October 2019, they fled Honduras for the U.S. after a man stalked and threatened to kill Juan’s mother. After being sent to Matamoros under MPP, Juan and his mother stayed in the encampment. The area, however, was controlled by a Mexican cartel. One day near the camp’s entrance, a group of men in a vehicle attempted to kidnap Juan’s mother when she returned from a convenience store with Juan. She quickly grabbed Juan, and they fell to the ground. Juan injured his cheek during the fall, leaving a scar on his face. Following these events, his mother was afraid to leave the camp for any reason. Juan became ill due to the weather conditions in Matamoros, where he endured very hot temperatures during the day and cold temperatures at night. Juan lost his appetite. Although his mother searched for medical assistance, she could not find the medical attention that Juan needed. At one point they were kidnapped for two months. They were released, but Juan’s mother felt trapped in the camp because she was petrified that cartel members would attempt to kidnap her again if she ventured from her tent. With no other option to save her son, she separated from Juan, as he sought protection alone from border officials. But for Juan, the trauma did not end; after their separation, he constantly cried, called for his mother to return, and wet the bed at night.²⁴

Young Center *Amicus* Brief, *Wolf v. Innovation Law Lab*, (Jan. 22, 2021).

²² See KIND Policy Report on MPP at Appendix C; see also Young Center Policy Report on MPP at Appendix C.

²³ See Brief of Local 1924 as *Amicus Curiae*, 19-cv-15716, ECF No. 39, Compl. ¶ 26, *Innovation Law Lab. v. Wolf*, 951 F.3d 1073 (9th Cir. 2019). U.S. asylum officers stated that MPP “adds to the already overwhelming burden on our country’s immigration judges, and further delays hearings for asylum seekers with meritorious claims.”

²⁴ See Brief of Young Center for Immigrant Children’s Rights *et al.* as *Amicus Curiae*, at 20, *Wolf v. Innovation Law Lab*, No. 19-1212, 141 S.Ct. 617 (Jan. 22, 2021).

C. USG Pushback Mechanism: Title 42 Expulsions

Beginning in March 2020, the USG authorized the expulsion of all undocumented noncitizens appearing at the border under the guise of preventing the spread of the COVID-19 pandemic.²⁵ This policy, known as Title 42, has categorically denied migrants access to asylum proceedings as required by U.S. obligations under the Refugee Convention.²⁶ Over 180,000 migrants have been summarily expelled under Title 42, including over 13,000 unaccompanied children.²⁷ The process, by design, fails to screen migrants, including children, for fear of persecution or safety concerns upon expulsion or return to country of origin.

Many of the unaccompanied children who have been expelled were first secreted away to undisclosed and unlicensed commercial hotels.²⁸ These children were placed under guard by security contractors with no training or certification in child welfare.²⁹ The use of secret detention practices placed children in environments ripe for predatory child abuse. Title 42 repudiates US obligations relating to the prohibition against torture by using incommunicado detention—children were detained in locations unknown to them and without access to the outside world for days or weeks at a time.³⁰

The use of rapid expulsion, regardless of a child’s fear of return to home country, again exemplifies the failure of the USG to protect the preemptory norm of non-refoulement or to consider the best interests of the child. Under Title 42, children have been expelled to incredibly dangerous areas

²⁵ See Order Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, CENTERS FOR DISEASE CONTROL AND PREVENTION (Mar. 24, 2020); *but see also* Letter from Public Health Leaders to HHS Secretary Azar and CDC Director Redfield (May 19, 2020), available at <https://reliefweb.int/report/usa-states-america/public-health-experts-urge-us-officials-withdraw-order-enabling-mass>. Many public health officials, doctors, and infectious disease experts have spoken out against the efficacy of Title 42 and have stated that it would not help control the spread of the virus in any meaningful way; *see also* U.N. High Commissioner for Refugees, *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, (Mar. 16, 2020) available at <https://data2.unhcr.org/en/documents/details/75349>.

²⁶ Refugee Convention, *supra*, note 1; Refugee Protocol, *supra*, note 1.

²⁷ See Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions, U.S. CUSTOMS AND BORDER PROTECTION (last modified Jan. 7, 2021) available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>; *see also* Zolan Kanno-Youngs, *Judge Halts “Public Health” Expulsions of Children at the Border*, N.Y. TIMES (updated Jan. 20, 2021) available at <https://www.nytimes.com/2020/11/18/us/politics/trump-migrant-children.html>.

²⁸ See “Declaration of Marisol Vargas” at 6, 2:85-cv-04544-DMG, ECF No. 920-2, *Flores v. Barr*, 407 F.Supp.3d 909 (C.D. Cal. 2020) (recalling being rebuffed by “[u]nidentified men, who appeared to be contractors of DHS” who denied court-appointed monitors access to speak with children detained at the Hampton Inn Hotel in McAllen, TX).

²⁹ See Malachy Schrobilgen & Sarah J. Diaz, *COVID-19’s Nefarious Toll on Migrant Children: Executive Overreach and a Framework to Prevent Abuse*, CTR. FOR THE HUM. RTS. OF CHILDREN, (November, 2020) available at <https://www.luc.edu/media/lucedu/chrc/pdfs/Schrobilgen-and-Diaz.pdf>.

³⁰ See Flores Independent Monitor Interim Report on the Use of Temporary Housing for Minors and Families Under Title 42 at 6-8, 2:85-cv-04544-DMG, ECF No. 938, *Flores v. Barr*, 407 F.Supp.3d 909 (C.D. Cal. 2020).

along the border.³¹ Children are also often expelled during hours when there are no authorities to receive them and the potential for kidnapping or exploitation is highest.³² Some children expelled to Mexico are not from Mexico and are simply left in a foreign country without a plan for their safety or care.³³ Consider the following example:

Ana*, a 14-year-old girl from El Salvador, and her 11-year-old brother Alex* fled to the U.S. border in July 2020 due to threats from gang members against their family because of their stepfather's job as a police officer. The children's mother fled to the U.S. in 2018, leaving them in their aunt's care, but as the gang's threats grew worse, their aunt's partner told the children they would have to leave the home. With nowhere else to go, Ana and Alex left El Salvador alone in hopes of reaching their mother. After crossing the border, they were held for six days in CBP custody, with no information about what would happen to them, and allowed to speak to their mother for only five minutes a day. Ana was sexually assaulted by a CBP official while in custody, but was afraid to tell anyone at the facility, and CBP officers monitored her calls with her mother. When the children were taken to the airport they believed that they were finally going to reach their mother, until Ana saw that their flight was destined for San Salvador. The children were able to reunify with their aunt after their expulsion, but the police have threatened the family with criminal charges because the children fled during the national quarantine, and they remain in hiding from the gang.³⁴

Complaint filed with Customs and Border Protection, Office of the Inspector General, (Sept. 15, 2020), on file with KIND.

New reports indicate some expelled children have been subjected to persecution upon return to their country of origin.³⁵

³¹ "Declaration of Florence Chamberlin," Kids in Need of Defense (KIND), (July 21, 2020) at 4.

³² *Id.* at 1.

³³ *Id.*

³⁴ Complaint filed with Customs and Border Protection, Office of the Inspector General, (Sept. 15, 2020), on file with KIND.

³⁵ *Id.* at 3.

D. USG Pushback Mechanism: Metering and Turn-backs

In spring 2018, the USG announced a “Turnback Policy” which directed border officials to “directly or constructively” turn back migrants without first screening them for asylum.³⁶ Officials were directed to do so through pretextual means, such as falsely asserting that a port of entry lacked capacity to process asylum seekers or through the use of verbal and physical abuse to coerce migrants, including children, to recant their stated fear of return.³⁷ The mechanism employed no oversight, no formal process, and in some cases, no record if a child had even appeared at the border. Some children were reportedly denied a place on the waitlist based on their skin color or a CBP officer’s subjective belief that they would be more likely to apply for asylum.³⁸

These practices leave unaccompanied children with impossible choices such as remaining in the dangers of Mexico, crossing the border without inspection via predatory enterprises including cartel smugglers, or return to persecution in home country.³⁹ Children, including unaccompanied children, were turned away, exposing them to the dangers of kidnapping, abuse, or death in Mexico.⁴⁰ Consider the following:

In December 2018, three Honduran children in Tijuana who traveled with the caravan and had not presented themselves at a port of entry due to metering, were tortured—and two of them were brutally murdered. At least two of them had already been identified as having a strong case for accessing protection in the US. “It was Mexican criminals who killed them, but it was the US government who sent them to the slaughterhouse.”⁴¹

The unsupervised, ad hoc practice has also led to arbitrary forced family separations. Consider the experience of Oscar, a young boy whose family was separated as part of the USG’s metering and turn-back policies:

³⁶ See 9 Office of Inspector General, U.S. DEP’T OF HOMELAND SEC., Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, Sept. 27, 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf> (confirming the implementation of a “turnback” policy executed by border patrol, but also noting that advocates were reporting the practice since 2016).

³⁷ See *Al Otro Lado, Inc. et al. v. McAleenan et al.*, 3:17-cv-02366, ECF No. 189, ¶¶ 51-3, 327 F.Supp.3d 1284 (S.D. Cal. 2018).

³⁸ *Al Otro Lado, Inc. et al. v. McAleenan et al.*, 3:17-cv-02366, ECF No. 189, ¶¶ 103-04, 327 F.Supp.3d 1284 (S.D. Cal. 2018).

³⁹ Women’s Refugee Commission, *Migrant and Refugee Caravans: Failed Responses to Women and Children in Need of International Protection and Humanitarian Aid*, at 10 (May 2019) available at <https://www.womensrefugeecommission.org/research-resources/migrant-and-refugee-caravans/> [hereinafter “WRC Caravan Report”].

⁴⁰ “WRC Report on MPP,” *supra* note 20, at 7.

⁴¹ “WRC Caravan Report,” *supra* note 39 at 10.

Oscar, a six-year-old Salvadoran boy, and his father were separated from Oscar's mother and younger brother for nearly eight months based on a CBP agent's unsupervised and arbitrary decision to separate the family. Oscar's father served in the Salvadoran military for three years before retiring to work for a private company. Oscar's mother, a homemaker, cared for Oscar and his little brother. But their home was abruptly damaged after a group of men forcibly entered it searching for Oscar's father. The men assaulted and threatened Oscar's father because of his military service, destroying his military credentials. After fleeing El Salvador, the family was separated at the border because a CBP agent improperly told them that only one parent and one child could enter into the U.S. He offered no explanation for his arbitrary decision. Oscar and his father were returned to Matamoros under MPP while his mother and brother entered the U.S., despite the entire family arriving and presenting themselves together. In Mexico, Oscar's father was kidnapped and held for ransom for several days by Mexican cartel members.⁴²

Young Center *Amicus* Brief, *Wolf v. Innovation Law Lab*, (Jan. 22, 2021) at 33.

IV. Conclusion and Recommendations

The USG pursued migration pushbacks with the express purpose of ending asylum and other relief for migrant children.⁴³ The USG did so by taking advantage of children's vulnerabilities and the lack of robust special protections for migrant children. The implementation of these pushbacks exploited gaps in the U.S. system, international system, and in the general principles of law applied to migrant protection. In light of the intentional and egregious nature of the violations of migrant children's rights by the USG, we respectfully submit the following recommendations:

First, the Special Rapporteur should fully investigate the systemic human rights violations by the USG as applied to children. Such investigation will provide transparency and insight into the state actions and institutional failures which enabled such abuses. These insights will protect this vulnerable population from being targeted through future abuses of executive power.

Second, the Special Rapporteur should also fully investigate all USG foreign policy actions that allow for pushbacks and the human rights violations that result from them. This investigation would necessary include the role Mexico played in allowing pushbacks and not offering sufficient protection to those affected. Such investigation would underscore the responsibilities of each

⁴² See Brief of Young Center for Immigrant Children's Rights *et al.* as *Amicus Curiae*, at 33, *Wolf v. Innovation Law Lab*, No. 19-1212, 141 S.Ct. 617 (Jan. 22, 2021).

⁴³ See Kids In Need of Defense, *What are the TVPRA Procedural Protections for Unaccompanied Children?*, Policy Report (Apr. 1, 2019) available at <https://supportkind.org/wp-content/uploads/2019/04/KIND-TVPRA-talking-points-4.1.19-FINAL.pdf> (detailing how the Trump administration repeatedly mischaracterized statutory protections for unaccompanied migrant youth as "loopholes" in the immigration laws).

country, and provide recommendations to prevent international cooperation that results in human rights violations and putting children at risk

Third, with a new Administration, the Special Rapporteur, via its investigatory findings, should call upon the USG to recommit to its international obligations under the Refugee Convention, the Refugee Protocol, and to urge the US government to ratify the UN CRC. This will strengthen international commitments to the rule of law and the responsible use of state power as applied to the rights of migrant children.

Fourth, the Special Rapporteur, in partnership with a USG committed to the CRC, must facilitate the development of a U.S. domestic law framework that treats migrant children as children.

Fifth, the Special Rapporteur, in partnership with a recommitted USG, must facilitate the development of a framework for observing international guidelines and recommendation when responding to a national emergency such as the COVID-19 pandemic. This framework must consider the unique vulnerabilities of migrant children.