AMERICAN PSYCHOLOGICAL ASSOCIATION

April 20, 2020

Dr. Felipe González Morales
Special Rapporteur on the Human Rights of Migrants
Office of the High Commissioner for Human Rights
United Nations
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Dear Dr. González Morales:

I am writing on behalf of the American Psychological Association (APA) to respond to the recent call for submissions for your upcoming thematic report on "ending immigration detention of children and seeking adequate reception and care for them" to be submitted to the 75th session of the General Assembly. Our association has actively opposed the detention of migrant children – particularly when separated from their parents – by U.S. immigration authorities and is even more concerned now about the health and wellbeing of detained children in the midst of the coronavirus pandemic.

APA is a scientific and professional organization representing psychology, composed of clinicians, researchers, educators, consultants, and students across the U.S. and around the world. Our association works to advance the creation, communication, and application of psychological knowledge to benefit society and improve lives. Since 2000, APA has held the status of nongovernmental organization (NGO) at the UN. APA is affiliated with the UN's Department of Global Communications, has special consultative status with ECOSOC, and has an active team of volunteer psychologists advocating at the UN Headquarters in New York.

We welcome the opportunity to respond to the critical issues surrounding the detention of child migrants raised in the call for submissions:

1) *Legislation or policies that prohibit or restrict the use of immigration detention of children and their families*

   A 1997 landmark legal agreement between immigration activist groups and the U.S. government, referred to as the ***Flores* settlement**, had a significant policy impact by setting standards for the detention of unaccompanied minor children, particularly regarding facility conditions and the timing and terms of the child's release. Since 1997, *Flores* has been significantly expanded by federal judges and is now interpreted to mean that all minors in detention – whether accompanied by their parents or not – cannot be held for more than 20 days. Over the years, the U.S. Congress could have passed a law to override the *Flores* settlement but has not done so.

   In April 2018, the Trump administration implemented new guidelines targeting migrant children and families as part of its "zero tolerance" policy in response to dramatic monthly increases in the numbers of families entering the U.S. across the southern border with Mexico. Under this policy, the prior "catch and release" approach often used by immigration authorities was discontinued –

750 First Street, NE
Washington, DC 20002-4242
(202) 336-5500
(202) 336-6123 TDD
www.apa.org

migrant families were no longer apprehended at the border and then released into the interior of the U.S. with the hope that they would appear for their immigration proceeding. Rather, families were detained together for up to the 20-day legal limit and the children were then placed in a federal shelter administered by the U.S. Department of Health and Human Services (DHHS), or the children were separated from their parents at the border and sent directly to shelter care. The parents were either detained longer without their children or deported. This "family separation" policy was vehemently opposed by APA and many other organizations as psychologically damaging and a human rights violation.

As highlighted in the 2019 APA Immigration and Refugee Policy Statement (APA, 2019), psychological research has consistently demonstrated the adverse outcomes of family separation on migrant mental health (e.g., Miller, Hess, Bybee, & Goodkind, 2018; Society for Community Research and Action, 2016). It was a bitter irony that the migrant children who were separated from their parents under this "zero tolerance policy" were then classified by DHHS shelters as "unaccompanied minors" – the same term used for migrant children who crossed the border without their parents.

U.S. immigration authorities still have the option to transfer unaccompanied migrant children to DHHS shelters for temporary placement. The average length of stay in these facilities is 30 to 45 days. The goal of these shelters is the safe reunification of minor children with their parents or other relatives in the community. If this vital option is not possible, migrant children are placed in foster care.

2) *Existing non-custodial alternatives to immigration detention of children (e.g., community-based reception solutions) and their effects on the protection of the rights of migrant children and their families*

When migrant children are released into the community, their housing and basic subsistence needs would be provided by their relatives or foster care placement. Ideally, they would also receive a range of supportive services from community-based programs provided by the nonprofit sector, including faith-based organizations. Ideally, these programs offer a collaborative service approach in which mental health professionals work with lawyers, social service professionals, and medical personnel to offer holistic care that addresses the range of the children's psychosocial, legal, and medical needs (Rousseau, Measham, & Nadeau, 2013). In this regard, a 2018 report by the APA Immigration Psychology Working Group, entitled *Vulnerable But Not Broken: Psychological Challenges and Resilience Pathways Among Unaccompanied Children from Central America*, highlights Terra Firma, a nationally-recognized and innovative medical-legal partnership program, as a prime example of this collaborative service model to aid migrant children and to protect their rights.

Since 2013, Terra Firma has been providing coordinated legal, medical, and counseling services to migrant children in New York City. For example, trauma assessment can be used both to inform the delivery of health and mental health care, as well as to inform expert testimony in support of children's immigration status at asylum hearings. The organization also provides an array of programming aimed at helping unaccompanied children integrate into their new communities (Gozdziak, 2015; Stark et al., 2015). Programming includes individual and group therapy to address the effects of violence, and medical and legal services, along with psychosocial services and sports activities to foster social engagement and recreational opportunities.

Ideally, community-based programs for migrant children would adopt a similar collaborative care model to address a combination of psychological, legal, and medical needs, reflect strengths-

based approaches, emphasize the development of peer support networks to sustain adaptive integration efforts, and help children and their families prepare for, and navigate, potential legal difficulties (González & Morgan Consoli, 2012; Vera Institute of Justice, 2015).

3) *Good practices or measures taken to protect the human rights of migrant children and their families while their migration status is being resolved*

In keeping with the UN Convention on the Rights of the Child (1990), it is paramount that practices and measures be in place to safeguard the basic human rights of migrant children and their families to "the enjoyment of the highest attainable standard of physical and mental health" (Article 12 of the International Covenant of Economic, Social, and Cultural Rights). According to the *Vulnerable But Not Broken Report* cited above, this can be attained in large measure through adherence to best practice standards for unaccompanied children, just as those set forth by the National Latinx Psychological Association (Torres, Fernández, et al., 2015). Furthermore, this report notes that the mental health section of a recent report by the Advisory Committee on Family Residential Centers (ACFRC, 2016), which is applicable to non-custodial settings, offers useful recommendations that address the: development of trauma-informed care policies and training for staff; identification and use of standardized, evidence-based screening and evaluation tools; identification and use of evidence-based individual and group psychotherapy and psychoeducational evaluations and treatment plans; mental health staffing and credentialing needs; standards and training for crisis responses; systematic collection of data to aid with program evaluation and improvement; use of translation and interpretation; appropriate triage and referral processes involving allied professionals; and collaboration with other organizations. Community-based programs are enhanced when a multidisciplinary team of professionals works together, shares information within the bounds of confidentiality agreements, and collectively makes decisions about how best to serve the needs of children and families (Baily et al., 2014). In order to protect the human rights of migrant children, the confidentiality of information obtained from their mental health treatment must be assured and not shared with immigration authorities, which could be used against the migrant children in immigration proceedings.

4) *Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families*

Significant financial and staffing challenges often need to be addressed to support community-based alternatives to achieve program stability and effectiveness. Standards of care must be established and followed. Staff must be qualified and trained. The complex service needs of migrant children and families require a multidisciplinary team of professionals, including mental health providers, to offer linguistically, culturally, and developmentally appropriate care that is trauma-informed. Many of these children have been traumatized as a result of exposure to extreme poverty and violence before and/or during their migration experience. They are now struggling to start a new life, while learning a new language in a new culture apart from family and friends.

There is a growing body of research that toxic stress (prolonged exposure to trauma and the biological stress response) and adverse childhood experiences can have a profound adverse impact on later adult health outcomes (APA, 2018; Shonkoff & Gardner, 2012). Fortunately, research also indicates that the impact of these environmental risk factors can be reduced through early and sustained intervention (Masten, 2014; Center on the Developing Child, 2015; Leslie et al., 2016). It is essential for community services, including schools and community health and social services programs, to provide this support to migrant children. Attention must also be

directed to ensure the legal right of children to adequate legal representation in preparation for and during their asylum hearing.

In designing these community services, a major challenge and opportunity is to create an infrastructure that places migrant children and their families front and center by fully including their voices in the process of determining interventions that will help them -- rather than relying solely on others to decide what is "best" for them. Such an approach will enable them to build their capacity to work with lawyers, health care providers, local policymakers, and others to advocate for themselves (e.g., through data collection) to improve the array of community services to meet their needs (Rusch, Frazier, & Atkins, 2015; Vesely, Letiecq, & Goodman, 2017). Community-based participatory research can provide guidance in developing culturally- and community-grounded, effective, and sustainable interventions to serve migrant children and families in communities (Vaughn, Jacquez, Lindquist-Grantz, Parsons, & Melink, 2017). This framework can increase the engagement of migrant communities to integrate their lived experience and cultural perspectives to better design support systems and policies that are just and humane and that build their capacity to more effectively meet their needs.

5) *Other relevant information*

Given the current coronavirus pandemic, community-based alternatives to detention for migrant children and their families are more critical than ever as a public health intervention. Yet these programs may also be suffering financially during this pandemic. One possible course of action would be to redirect some of the funds currently expended for the detention and care of migrant children and families to provide for case managers to coordinate and access housing and supportive services in the community for them. Targeted resources would also be needed to provide access to COVID-19 testing, tracking, and treatment.

In closing, APA would like to commend you for selecting the critically important theme of ending the detention of migrant children for your report to the General Assembly. We greatly appreciate the opportunity to provide input based on our experience in the U.S. to help to inform international efforts. Please do not hesitate to contact me or Dr. Ellen Garrison, APA's Senior Policy Advisor at egarrison@apa.org, if we might be of further assistance to you.

Sincerely,

Arthur C. Evans, Jr., PhD
Chief Executive Officer

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