



**Written Statement of the
Campaign for Youth Justice**

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**before the
Subcommittee on Border Security and Immigration
of the Senate Judiciary Committee
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Hearing on TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children

Chairman Tillis, Ranking Member Durbin, and Members of the Committee:

On behalf of the Campaign for Youth Justice (CFYJ), we write to offer comments on today’s hearing titled “TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children.” CFYJ is a national organization whose mission is to end the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. The strategic goals of CFYJ are to reduce the total number of youth prosecuted in the adult criminal justice system and to decrease the harmful impact of trying youth in adult court. Given these goals, we have become aware of the recent proposals by Congress and the administration that misidentify unaccompanied minors as transnational gang members, and that call for additional sanctions against their parents/caregivers for smuggling them into the United States. These proposals are alarming, both in their targeting of vulnerable children of color fleeing countries immersed in violence and in their focus solely on suppression and deportation, strategies research has shown will compromise community safety.

On February 9, 2017, President Trump issued an Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking, calling on federal law enforcement agencies to prioritize and dedicate resources to “identify, interdict, disrupt and dismantle transnational criminal organizations and subsidiary organizations...[.]”¹ In August of 2017 it was revealed that U.S. Immigration and Customs Enforcement (ICE) began targeting unaccompanied minors and their families during Operation Border Guardian/Border Resolve, arresting 650 individuals, the vast majority of whom had no

¹ Exec. Order No. 13773, 82 C.F.R. 10691 (2017)

criminal history.² This included a focus on teenagers (some as young as 16) whom they suspected were affiliated with gangs, even if they had little evidence.³ Per ICE policy, “a person can be identified as a gang member if they meet two or more criteria, including . . . frequenting an area notorious for gangs and wearing gang apparel.”⁴ As a result, immigrant youth are now being targeted by law enforcement for simply wearing a particular soccer jersey or writing the area code of their home country.⁵ According to a class action lawsuit filed by the American Civil Liberties Union, children suspected of being affiliated with a gang are “arrested, denied access to family and legal counsel . . . and held in jail-like conditions.”⁶ These young people are detained with no idea how long they will be there, what will become of them after they leave, or what will happen to them while they are in custody. When police do not have enough evidence to charge minors with a crime, some jurisdictions are reporting them to ICE who takes custody of the unaccompanied minor and sends them to the Office of Refugee Resettlement (ORR). ORR is not required to notify parents or offer any meaningful review of ICE’s reason to detain, and they have the ability to send the children across the country into contracted secure detention facilities. The lack of due process protections for unaccompanied minors during this practice is further exacerbated by language barriers, underlying trauma, and a lack of understanding of U.S. judicial system.

The increased targeting of youth of color continues to take place despite the fact that there is no evidence that unaccompanied minors are driving gang violence in the United States.⁷ According to June 2017 written testimony from U.S. Border Patrol Acting Chief Carla Provost, since fiscal year 2012, U.S. Border Patrol apprehended 159 unaccompanied alien children with confirmed or suspected gang affiliations.⁸ Of these, 56 were suspected or confirmed to be affiliated with MS-13.⁹ Between 2012-2017, it is estimated that approximately 45,400 unaccompanied minors were apprehended.¹⁰ This is less than 0.1% of the unaccompanied minors

² Elise Foley, *ICE’s ‘Targeted Enforcement Operation’ Mostly Arrests Immigrants It Wasn’t Targeting*, HUFFINGTON POST (Aug. 1, 2017, 3:32 PM), <https://www.huffingtonpost.com/entry/ice-enforcement-us-5980c7fde4b08e1430063383> (“Of 650 arrests carried out during the operation last week, 70 percent of those detained were not the targets, ICE officials said Tuesday. One-fifth of the total arrested had criminal convictions.”).

³ Stephen Kang, *The Trump Administration Is Detaining Immigrant Kids for Gang Membership Without Evidence. So We Sued.*, ACLU (Aug. 14, 2017, 2:00 PM), <https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-administration-detaining-immigrant-kids>.

⁴ First Amended Petition for Writ of Habeas Corpus and Class Action Complaint for Injunctive and Declaratory Relief at 10, *Saravia v. Sessions*, Case No. 17-cv-03615-VC. (N.D. Cal. 2017), available at https://www.aclunc.org/docs/20170811-first_amended_petition.pdf [hereinafter First Amended Petition].

⁵ Kang, *supra* note 3.

⁶ See First Amended Petition, *supra* note 4 at 1.

⁷ See Lauren Dezenski, *Sessions: Many unaccompanied minors are ‘wolves in sheep’s clothing’*, POLITICO (Sept. 21, 2017, 6:19 PM), <https://www.politico.com/story/2017/09/21/jeff-sessions-border-unaccompanied-minors-wolves-242991> (“In a speech to local and national law enforcement this afternoon in Boston, Sessions said transnational gangs like Central America-based MS-13, use what’s known as the ‘unaccompanied refugee minors’ program to ‘as a means by which to recruit new members.’”).

⁸ *The MS-13 Problem: Investigating Gang Membership, its Nexus to Illegal Immigration, and Federal Efforts to End the Threat Before the S. Comm. on the Judiciary*, 115th Cong. 3 (2017) (written testimony of Carla Provost, Acting Chief, U.S. Border Patrol, U.S. Customs and Border Protection, U.S. Department of Homeland Security).

⁹ *Id.*

¹⁰ *U.S. Border Patrol Southwest Border Apprehensions by Sector FY2017*, U.S. CUSTOMS AND BORDER PROTECTION (Dec. 15, 2017), <https://www.cbp.gov/newsroom/stats/usbp-sw-border-apprehensions-fy2017>.

that have entered the country. Rather, evidence on the ground indicates that most youth fleeing Central American are trying to flee gang violence and recruitment, not perpetuate it.¹¹

The administration also dehumanized these youth by recently issuing a statement calling suspected gang members “animals.”¹² This mislabeling and targeting of young people of color is reminiscent of calls in the 1990s when alarmist name calling and subpar research gave rise to public fear of the so-called “Superpredator.”¹³ At the time, a report issued by John DiIulio called on the nation to fear young, wilding teens, remorseless and driving violent crime.¹⁴ This led to nearly every state in the nation passing laws making it easier to charge children as adults and to impose lengthy mandatory minimums and life without parole sentences.¹⁵ However, the predictions never materialized. In fact, youth crime is at a 30-year low,¹⁶ but youth and communities of color are still paying the price for these damaging and ineffective policies. Given this background, we are particularly troubled that today’s hearing focuses on policies that further promote racial profiling and the targeting of Latino youth, such as the Criminal Alien Gang Member Removal Act (S. 2380), sponsored by Senator Dean Heller (NV), rather than examining ways to protect vulnerable youth and find real solutions to combatting gang violence.

As an organization dedicated to child and youth well-being and advocates for young people, families, community safety and justice, we strongly urge you to reject Senator Heller’s bill and similar legislation. The Criminal Alien Gang Member Removal Act (S. 2380) promotes widespread racial and ethnic profiling of young people and communities and dramatically expands the detention of non-citizens, putting many members of our communities at risk and reducing public safety.

The Criminal Alien Gang Member Removal Act creates a new sweeping definition of “criminal gang,” and targets those who never committed a single criminal act for deportation. Further, states with broadly defined gang databases, such as those called for in S. 2380, disproportionately harm immigrant communities and undocumented youth under these policies, including those who are seeking asylum in the United States to escape brutal gang violence that plagued their home countries. In fact, some states and localities are moving away from these practices. For example, the city of Portland, Oregon, announced in 2017 that it will end the use of a decades-old gang database that, not surprisingly, targeted racial and ethnic minorities. And

¹¹ Jane C. Timm, *Fact Check: Trump’s Misleading Claims about ‘Catch and Release’*, NBC NEWS (May 2, 20-18, 3:59 PM), <https://www.nbcnews.com/politics/immigration/fact-check-trump-s-misleading-claims-about-catch-release-n870591>; Jessie Knadler, *Advocates Say Teen Migrants Need Help, Not Detention Facilities*, NPR (Mar. 29, 2018, 5:02 AM), <https://www.npr.org/2018/03/19/594839346/advocates-say-teen-migrants-need-help-not-held-in-detention-facilities>.

¹² WHAT YOU NEED TO KNOW ABOUT THE VIOLENT ANIMALS OF MS-13, THE WHITE HOUSE (May 21, 2018), available at <https://www.whitehouse.gov/articles/need-know-violent-animals-ms-13/>.

¹³ Alex S. Vitale, *The New ‘Superpredator’ Myth*, NY TIMES (Mar. 23, 2018), <https://www.nytimes.com/2018/03/23/opinion/superpredator-myth.html>.

¹⁴ John DiIulio, *The Coming of the Superpredators*, WEEKLY STANDARD (Nov. 27, 1995, 12:00 AM), <https://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

¹⁵ Krista Larson & Hernan Carvente, *Juvenile Justice Systems Still Grappling with Legacy of the ‘Superpredator’ Myth*, Vera Inst. (Jan. 24, 2017), <https://www.vera.org/blog/juvenile-justice-systems-still-grappling-with-legacy-of-the-superpredator-myth>.

¹⁶ Office of Juvenile Justice and Delinquency Prevention, *Juvenile Arrest Rate Trends*, OJJDP STATISTICAL BRIEFING BOOK (Dec. 6, 2017), https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201.

in California, AB90, the Fair and Accurate Gang Database Act of 2017, which greatly restricts who is placed on the gang databases, took effect in January of this year. S. 2380 also codifies ICE's troubling policies related to gangs by granting the Secretary of Homeland Security broad authority to designate small groups of people as a "criminal gang" and requires mandatory detention and deportation for any current or former member of such designated groups. Based on just a mere allegation, this legislation will lead to immigrant youth becoming ineligible for asylum, temporary protected status, and special immigrant juvenile status.

If Congress truly wants to address gang violence in the United States, it should first ensure that solutions for unaccompanied minors fleeing Central America are not conflated with gang policies. Instead, Congress should seek solutions that provide resources for local programs that provide support using a model of trauma-responsive care to ensure children fleeing violence and trauma have the supports and guidance necessary to rebuild their lives. Legislation should also adopt a comprehensive approach that addresses prevention and intervention rather than singularly focusing on law enforcement suppression tactics. For example, the Office of Juvenile Justice and Delinquency Prevention's Comprehensive Gang Model uses research-based interventions and integrates Federal, state, and local resources for prevention and intervention programs.¹⁷ In addition, the Senate recently passed H.R. 3249, the Project Safe Neighborhoods Grant Program Authorization Act of 2018. The bill, which passed with a substitute amendment from Senator John Cornyn (TX), provides grants to localities to develop "evidence-based and data-driven intervention and prevention initiatives...which may include street-level outreach, conflict mediation, provision of treatment and social services, and the changing of community norms."¹⁸ These types of solutions will lead to stronger, safer communities and protect our most vulnerable youth.

We urge you to reject any proposals that do not take a comprehensive approach to preventing gang violence and to reject attempts at falsely criminalizing youth fleeing violence and hoping for a safer and brighter future in the United States.

¹⁷ ABOUT THE OJJDP COMPREHENSIVE GANG MODEL, NAT'L GANG CENTER, <https://www.nationalgangcenter.gov/Comprehensive-Gang-Model/About> (last visited May 2, 2108).

¹⁸ Project Safe Neighborhoods Grant Program Authorization Act of 2018, H.R.3249, Sec. 3(a)(2) (115th Cong).