

Mandates of the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA USA 21/2017

29 August 2017

Dear Minister Counsellor,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/21, 34/19.

In this connection, we would like to bring to the attention of your Government, information we have received concerning the **termination of the Central American Minors Parole Program, following President Trump's Executive Order entitled « Border Security and Immigration Enforcement Improvements »**.

According to the information received:

On 25 January 2017, President Trump signed an Executive Order entitled « Border Security and Immigration Enforcement Improvements ». In accord with this Executive order, on 16 August 2017, Acting Secretary of Homeland Security terminated the Central American Minors (CAM) Parole Program.

According to the information given by the U.S. Citizenship and Immigration Services (USCIS), notices will be issued to individuals conditionally offered parole under the CAM Parole program, who have not yet departed their countries of origin. These notices will inform them that the CAM Parole Program has been terminated and that their conditional offer of parole has consequently been rescinded. In accordance with current immigration laws, only lawful permanent residents and U.S. citizens can file for family-based immigrant visa petitions. Therefore, many parents currently in the U.S. are unable to file an immigration petition for their previously CAM eligible children, leaving them with no alternative for family reunification other than through irregular means. It is also important to state that the CAM Parole Program was the only alternative for children who were denied refugee status under the CAM Refugee Program to join their families in the United States.

It is further alleged that 1,465 minors already in the United States under the CAM Parole Program will no longer be eligible to renew their status. According to the information given by DHS, individuals who were allowed into the United States under the CAM Parole Program will retain parole until the expiration of their

granted period and will only be able to renewed their status if they can demonstrate « an urgent humanitarian or a significant public benefit reason » after an analysis on a case-by-case basis.

While we do not wish to prejudge the accuracy of these allegations, and as a consequence of these developments, we are gravely concerned that the termination of the CAM Parole Program will lead to a rise in irregular migration, strengthening smuggling organizations and putting in danger thousands of children who will be exposed to risks and potential abuses, such as physical abuse, extortion, and general unsafe travel conditions. According to USCIS, those who were granted conditional approval under the CAM program will no longer be permitted entry – a development affecting 2,444 minors from El Salvador, 231 from Honduras and 39 from Guatemala. We would further like to express our concern over the possible return of hundreds of children currently under parole in the United States, which could be separated from their families and sent back to their countries of origin as a consequence of the ending of the CAM parole programme and in possible violation of the non-refoulement principle.

In connection with the above mentioned facts and concerns expressed, we would like to refer your Government to articles 2, 17, 23 and 24 of the International Covenant on Civil and Political Rights, ratified by the United States of America on 8 June 1992. We wish to refer particularly to article 23 which provides that “ the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”, and to article 24, that states that: “Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

Allow us also to draw your Government’s attention to para. 10 of the General Assembly Resolution 62/156 which “urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification”.

We also would like to refer to article 3 of the CAT, which provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of being subjected to torture. Furthermore paragraph 9 of the General Comment No. 20 of the Human Rights Committee, states that State parties, in order to fulfill their obligations under article 7 of the ICCPR, “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.” This absolute prohibition against refoulement is broader than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee status under article 33 of the 1951 Refugee Convention

or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee status determinations, to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

Furthermore, we would like to refer your Government to the ILO Recommendation n. 151 concerning Migrant Workers whose article 13 provides that “all possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible”. In this regard, we would finally like to recall to your Government that, within the framework of the International Labour Organization, the Tripartite Meeting of experts on Future ILO activities in the field of migration adopted already in 1997 a number of guidelines which stated, inter alia, that “prolonged separation and isolation of family members lead to hardships and stress affecting both the migrants and the dependents left behind, which may give rise to social, psychological and health problems...”.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide specific details about how your Government intends to observe the above mentioned provisions of the relevant international human rights instruments and apply them to the new criteria for the renewal of paroles, notably for the children who are currently under parole in the United States.
3. Please provide information on any measures taken to offer another pathway to residency for children already under the CAM Parole Program in the United States.
4. Please provide information on any measures taken to guarantee the safety of family members who were granted conditional approval under the

CAM program but will no longer be permitted entry into the United States.

5. Please indicate what measures your Government intends to take in line with target 10.7 of the sustainable development agenda, by which States commit to facilitate orderly, safe, and responsible migration and mobility of people.
6. What orderly, safe and responsible channels are available for family reunification, including for migrants with family members living in the United States with a temporary residence permit?
7. What orderly, safe and responsible channels are available for particularly vulnerable migrants, fleeing poverty, discrimination, violence, conflict, political upheaval and poor governance in their countries of origin, to enter the United States?

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Government to clarify the issue/s in question.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Minister Counsellor, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment