



March 19, 2018

Ms. E. Tendayi Achiume
U.N. Special Rapporteur on Contemporary Forms of Racism,
Racial Discrimination, Xenophobia and Related Intolerance
c/o OHCHR-UNOG
Office of the High Commissioner for Human Rights
Palais Wilson
1211 Geneva 10, Switzerland
Submitted via email: racism@ohchr.org

Dear Ms. Achiume,

Please accept the Campaign for Youth Justice's (CFYJ) submission in relation to your thematic report to the Human Rights Council on the issue of racism, racial discrimination, and xenophobia in the context of laws, policies, and practices relating to citizenship, nationality, and immigration.

Numerous international declarations and conventions prohibit discrimination on the basis of race.¹ Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination specifically requires States Parties to prohibit and eliminate racial discrimination in the enjoyment of various civil, political, economic, social, and cultural rights. Unfortunately, in the past fourteen months, there has been an uptick in anti-immigrant rhetoric and enforcement in the United States, which has had a severe impact on youth of color.

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...[.]”² In August of 2017 it was revealed that U.S. Immigration and Customs Enforcement (ICE) began targeting teenagers 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

¹ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; 19 I.L.M. 33 (1980); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989); International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967); Universal Declaration of Human Rights, G.A. Res. 2. 17A (III), U.N. Doc. A/810 at 71 (1948).

² Exec. Order No. 13773, 82 C.F.R. 10691 (2017)

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>.

wearing gang apparel.”⁴ As a result, children of color 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 When police do not have enough evidence to charge minors with a crime, they 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.

In addition to targeting youth of color for suspected gang affiliation, ICE adopted a “surge initiative,” which uses immigrant youth to target undocumented parents and guardians who allegedly paid smugglers to have their children brought to the U.S.⁷ While this new initiative was framed as a way to disrupt human smuggling networks, the tactics are alarming and very well could lead to the opposite effect. Children fleeing their home country to come to the U.S. often do so because the security and law enforcement systems in their country have failed to protect them from harm. Further, these enforcement tactics may embolden criminal actors who may subject children to even more costly, dangerous, and hidden routes. What is more, according to news reports, only a handful of people had been charged with federal smuggling crimes a month into the initiative. Not only has the initiative proved ineffective, it also undermines the stability and safety of our communities. Fear of immigration enforcement has already reduced engagement with local police and the reporting of crimes, including domestic violence and sexual assault. Such policies can also tear apart families, leaving traumatized children, including children who are U.S. citizens, dependent on child welfare or other social service agencies and without their family for support. This enforcement initiative is an inappropriate use of programs and services intended to protect children, and it threatens the very integrity of our child protection principles and systems.

The Department of Homeland Security (DHS) has also been directed to expand its priorities for immigration enforcement to include anyone who has violated immigration laws, which includes both undocumented immigrants and immigrants with legal status.⁸ The new priorities include people with any type of criminal conviction, and those who committed an act that could be

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 John Burnett, *ICE Has Arrested More Than 400 In Operation Targeting Parents Who Pay Smugglers*, NPR (Aug. 18, 2017, 4:31 PM), <https://www.npr.org/2017/08/18/544523231/arrests-of-undocumented-parents-sparks-debate-between-federal-officials-and-immi>.

⁸ Exec. Order No. 13768, 82 FR 8799 (2017); Exec. Order No. 13767, 82 FR 8793 (2017); Memorandum from Sec. John Kelly on Enforcement of the Immigration Laws to Serve the Nat’l Interest (Feb. 20, 2017), available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf; Marcelo Rochabrun, *ICE Officers Told to Take Action Against All Undocumented Immigrants Encountered While on Duty*, PROPUBLICA (July 7, 2018, 8:00 AM), <https://www.propublica.org/article/ice-officers-told-to-take-action-against-all-undocumented-immigrants-encountered-while-on-duty>.

charged with a criminal offense.⁹ While juvenile delinquency charges have typically been treated differently than criminal charges, it is likely that youth with delinquency charges may now be targeted for immigration enforcement as well.¹⁰ This is particularly troubling given the fact that, while the U.S. has significantly reduced the rate of incarcerated youth over the past decade, the racial and ethnic disparities for incarcerated youth have grown.¹¹ In particular, Latino youth are 65 percent more likely to be detained or committed than white youth and African American youth bear the brunt of racial profiling, being sent to detention at five times the rate of white children.¹²

Youth are even more likely to be targeted by the new enforcement policies given the increase of police officers in school. Starting in the early 2000s and stemming from high-profile school shootings like Columbine, schools began to incorporate zero-tolerance policies and increase police presence in schools.¹³ While initially intended to address gun violence in school, these zero-tolerance policies quickly lead to students being suspended or expelled for less serious offenses.¹⁴ Not only have schools expanded their zero-tolerance policies, but some state laws now require schools to report certain infractions to law enforcement agencies.¹⁵ While these laws are primarily intended to target criminal conduct, some jurisdictions have actually criminalized nonviolent and nonthreatening behavior in schools, including disrupting class and truancy.¹⁶ Given the administration's push to involve local law enforcement in immigration law enforcement, school discipline policies that funnel youth into the justice system may have additional life-altering consequences for immigrant youth.¹⁷ This is particularly true for youth who end up in the adult criminal justice system for school-based behavior.¹⁸

Congress has also had its eye on targeting suspected gang members. In September, the U.S. House of Representatives passed H.R. 3697, the Criminal Alien Gang Removal Act. The bill creates a new sweeping definition of "criminal gang," and targets those who never committed a

⁹ Memorandum from Sec. John Kelly on Enforcement of the Immigration Laws to Serve the Nat'l Interest (Feb. 20, 2017), available at https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

¹⁰ NONCITIZEN YOUTH IN THE JUVENILE JUSTICE SYSTEM, JUVENILE DETENTION ALTERNATIVE INITIATIVE 2 (2018), available at <http://www.aecf.org/m/resource/doc/AECF-NoncitizenYouthUpdate-2018.pdf>.

¹¹ Molly Kneffel, *Youth Incarceration in the United States, By the Numbers*, TEEN VOGUE (Oct. 4, 2017, 12:28 PM), <https://www.teenvogue.com/story/youth-incarceration-in-the-united-states-by-the-numbers?platform=hootsuite>.

¹² *Latino Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Oct. 12, 2017), <http://www.sentencingproject.org/publications/latino-disparities-youth-incarceration/>; *Black Disparities in Youth Incarceration*, THE SENTENCING PROJECT (Sept. 12, 2017), <http://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>.

¹³ LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE, NAACP LEGAL DEFENSE FUND 4 (2017), available at http://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf.

¹⁴ *Id.*

¹⁵ *Policing Students*, 28 HARV. L. REV. 1747, 1754-55 (Apr. 10, 2015), available at <https://harvardlawreview.org/2015/04/policing-students/>.

¹⁶ *Id.* at 1755 (...for example, in Toledo, Ohio, it is illegal to disrupt a class, and in Texas it is a crime for a child age twelve or older to miss three days of school within a four week period.)

¹⁷ NONCITIZEN YOUTH IN THE JUVENILE JUSTICE SYSTEM, *supra* note 10 at 4-5.

¹⁸ Letter from Rachel Marshall, Federal Policy Counsel, Campaign for Youth Justice to Bridget Bayless and Megan Noble, Standards and Accreditation Specialists, American Correctional Association (Dec. 1, 2017), available at http://www.campaignforyouthjustice.org/images/pdf/Final_Comments_to_ACA_on_Youth_Isolation.pdf.

single criminal act, unlike current law, which requires non-citizens be convicted of a crime to be eligible for deportation.¹⁹ H.R. 3697 also grants 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.²⁰ It should also be noted, that once identified as a “criminal gang,” there is little to no recourse for an individual to challenge that label and be removed from the national gang database.

Innocent youth of color should never be targeted, but we find it particularly troubling that there has been a renewed focus on implementing such draconian and cruel measures rather than taking steps to protect those in the Deferred Action for Childhood Arrivals program, and steps that would more broadly protect vulnerable youth in our communities, such as finding a way to dismantle the school-to-prison pipeline. Instead of living up to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, the U.S. has continued to implement policies and laws that prevent some of the nation’s most vulnerable inhabitants from enjoying their civil, political, economic, social, and cultural rights. As you continue your country visits and research for your first thematic report, we urge you to further investigate these issues.

We thank you for this opportunity to provide this information and we are ready to answer any further questions you or your staff may have.

Sincerely,



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¹⁹ Criminal Alien Gang Removal Act, H.R. 3697, 115th Cong. (2017).

²⁰ *Id.* at § 2.