

A TREACHEROUS JOURNEY:

Child Migrants Navigating the U.S. Immigration System

CENTER FOR
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STUDIES



Executive Summary

A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System addresses the issues raised by the recent historic and unabated increase in the number of children coming unaccompanied – without a parent or legal guardian – to the United States. From 6,000–8,000 unaccompanied children entering U.S. custody, the numbers surged to 13,625 in Fiscal Year 2012 and 24,668 in Fiscal Year 2013. The government has predicted that as many as 60,000 or more unaccompanied children could enter the United States in Fiscal Year 2014. These children come from all over the world, but the majority arrive from Mexico and Central America, in particular the Northern Triangle countries of El Salvador, Guatemala and Honduras.

Children come unaccompanied to the United States for a range of reasons. Numerous reports and the children themselves say that increasing violence in their home communities and a lack of protection against this violence spurred them to flee. Children also travel alone to escape severe intrafamilial abuse, abandonment, exploitation, deep deprivation, forced marriage, or female genital cutting. Others are trafficked to the United States for sexual or labor exploitation. Upon arrival, some children reunite with family members they have not seen in many years, but their migration is often motivated by violence and other factors, in addition to family separation.

Their journeys may be as harrowing as the experiences they are fleeing, with children often facing sexual violence or other abuses as they travel. The children's challenges continue when U.S. immigration authorities apprehend them, take them into the custody of the federal government, and place them in deportation proceedings. There, they are treated as "adults in miniature" and have no right to appointed counsel and no one to protect their best interests as children in the legal system. In addition, existing forms of immigration relief do not provide sufficient safeguards to protect against deportation when it is contrary to their best interests.

Illustration: Can of Creative

FIGURE 1:
Influx of Unaccompanied Children into the United States



Main Gaps in Protection

There has been a growing recognition in the United States of the unique vulnerabilities and special needs of children in the U.S. immigration system, in particular unaccompanied children (also referred to as UACs). The Homeland Security Act (HSA) of 2002 and the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, for example, included groundbreaking provisions that have helped increase the protection of children in the U.S. immigration system. However, the HSA, TVPRA, and other legal and policy reforms do not go far enough.

A Treacherous Journey examines the major gaps in protection that remain in immigration proceedings: a lack of incorporation of the best interests of the child principle, a lack of government-appointed counsel for children, a lack of government-appointed child advocates for all UACs, and a lack of child-sensitive standards for immigration relief options. The gravity of these gaps and the need to address them have become more urgent with the recent influx.

Best Interests Principle

The “best interests of the child” standard is the cornerstone principle of child protection both internationally and in the U.S. child welfare and juvenile justice systems. The principle requires that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Although incorporated into other domestic legal contexts, the best interests of the child principle is not binding in immigration proceedings. Rather, migrant children must continue to raise defenses against removal (or deportation) just as an adult would. In the end, children face returning to their home country without consideration of whether return would be contrary to their best interests. Failure to consider the best interests of the child prior to repatriation has led to children being sent back to countries where they have no dedicated adult to care for them or where their well-being, and even their life, is otherwise in danger, resulting in violations of their human rights.

Legal Representation

Unlike in other domestic court proceedings, the U.S. government usually does not appoint counsel for unaccompanied children in immigration proceedings. As a result, the majority of unaccompanied children facing removal do not have lawyers. Therefore, children with limited education and, often, limited English skills, stand alone before trained government attorneys and immigration judges. Without counsel, the children are unlikely to understand the complex procedures they face and the options and remedies that may be available to them under the law. Lacking representation means that a positive outcome is far less likely and that a child’s experience during the proceedings will be unnecessarily negative and in some cases traumatic.

The TVPRA of 2008 has increased representation of unaccompanied children by making the Secretary of Health and Human Services responsible to “ensure, to the greatest extent practicable” that all unaccompanied children have legal representation, and encouraging the Department of Health and Human Services (HHS) to “make every effort to utilize the services of pro bono counsel” to represent them free of charge. Together, these provisions have facilitated pro bono representation and resulted in a public-private partnership model that matches pro bono attorneys in the private sector with unaccompanied children who need representation, leveraging modest resources into millions of dollars’ worth of pro bono representation for these children.

Nevertheless, a large gap remains in resources for legal counsel, so that most children appearing before immigration judges are still unrepresented. The Senate comprehensive immigration reform bill, S. 744, and the House of Representatives’ companion bill, H.R. 15, seek to address this critical deficiency by including provisions mandating appointment of counsel for unaccompanied children. Until Congress enacts these or similar provisions, the representation gap will continue to grow as the number of unaccompanied children continues to climb.

Child Advocates

Compounding lack of access to counsel, the United States also does not provide all unaccompanied children in immigration proceedings with an independent child advocate, as occurs in domestic child welfare

proceedings. Thus, these children have no one to advocate for their best interests and to protect their welfare. The TVPRA granted HHS the authority to appoint an independent child advocate in cases of "child trafficking victims and other vulnerable unaccompanied alien children" to "advocate for the best interest of the child," including with respect to repatriation decisions. However, child advocates are appointed only in relatively few instances and on a discretionary basis, even for particularly vulnerable children such as trafficking victims. Child advocates are not appointed in *all* unaccompanied children's cases, even though all unaccompanied children are vulnerable (by virtue of being separated from a parent or guardian) and require special protections given that they face legal proceedings that could lead to deportation and are without an adult to advise them and ensure their welfare. Moreover, even when authorities appoint child advocates, neither the Immigration and Nationality Act nor the TVPRA *require* adjudicators to take into primary consideration the child's best interests when they rule on immigration relief or removal.

Report Overview

A Treacherous Journey – written by the Center for Gender & Refugee Studies (CGRS) and Kids in Need of Defense (KIND) with the support of the John D. and Catherine T. MacArthur Foundation – considers in detail the treatment of immigrant children in adversarial removal proceedings, in relevant administrative adjudicatory venues, and upon repatriation. We focus on unaccompanied children because they have particular and recognized vulnerabilities, although the report also contains some findings and recommendations regarding accompanied children who are principal applicants for relief. *A Treacherous Journey* offers recommendations for reform consonant with recognized principles of child protection grounded in practical experience. Because most of the report's recommendations require resources, we also broadly call on Congress to appropriate adequate funds or re-prioritize already allocated funds to implement the recommendations.

As an overarching essential recommendation, we recommend that government-funded legal counsel be provided for all unaccompanied children, using a mix of private pro bono counsel and direct representation by

appointed immigration attorneys. Safeguarding every child's meaningful access to immigration relief requires the availability of legal counsel. Changes to the immigration system are largely meaningless without counsel to guide children through the complexities of U.S. immigration laws and procedures.

A Treacherous Journey also broadly calls on the government to make available to the public data on unaccompanied children that HHS' Office of Refugee Resettlement (ORR) and other agencies have statutory obligations to collect. The public report should include data on Customs and Border Protection's (CBP) apprehension and screening of unaccompanied children from contiguous countries, data on unaccompanied children in federal custody – including statistical data and the types of immigration relief sought, outcomes, and whether the children have legal representation and a child advocate, and data on the repatriation of unaccompanied children returned to their countries of origin. A lack of publicly accessible, comprehensive statistics and other information on UACs obfuscates the scope of the problem and hampers efforts to identify successful solutions.

Substantive Challenges

Section 1 looks at adjudication of the forms of relief most common for unaccompanied children and principal child applicants – asylum and related protections for those fleeing persecution and torture, Special Immigrant Juvenile Status (SIJS), and T and U visa categories – identifying the challenges children face in obtaining these forms of relief. The report concludes that the current forms of relief do not provide adequate protection, especially for unaccompanied children, from return to situations where they face danger, abandonment, or other circumstances harmful to their well-being. We recommend, therefore, that the United States create child-sensitive standards for asylum, SIJS, and other forms of relief. We also recommend that the United States enact legislation making the best interests of the child a primary consideration in all actions and decisions affecting immigrant children. We further propose that the United States create a new form of legal relief for children otherwise ineligible for protection who face return to their home country that is contrary to their best interests. To

safeguard the rights of children, independent child advocates should be assigned in all cases involving UACs in removal proceedings.

Procedural Challenges

Section 2 considers the procedural issues affecting children's immigration cases. Although this section notes recent advances in the treatment of unaccompanied children and principal child applicants, it also identifies key remaining challenges. Chief among these is the inherently adversarial nature of the system for children in removal proceedings before the Executive Office for Immigration Review (EOIR), including the way they are examined and cross-examined in an intimidating environment. There is also a lack of sufficient training of both immigration judges and officers of the U.S. Citizenship and Immigration Services (USCIS) on issues regarding child development and child-sensitive, age-appropriate questioning.

To address these challenges and improve children's treatment, we recommend that, consistent with the TVPRA, the government adopt regulations requiring immigration judges and USCIS officers to take into account the specialized needs of unaccompanied children in handling all procedural aspects of their cases. The regulations should prohibit intimidating and otherwise inappropriate questioning of children and limit testimony to disputed issues.

Comprehensive Services

Section 3 identifies the challenges for children in removal proceedings to access comprehensive legal and other support services and to participate effectively in the

proceedings. In addition, we highlight the importance of allocating resources for legal services to meet children's legal needs and in consideration of the fact that the majority of unaccompanied children's cases are heard following their release from ORR custody. This section recommends developing a comprehensive system – modeled on juvenile and family courts – that ensures the availability of attorneys, child advocates, and social services at the immigration court itself rather than at diverse locations. We also recommend the widespread use of juvenile dockets assigned to specialized judges.

Safe Return

Section 4 looks at the policies and procedures intended to ensure the safe return and reintegration of unaccompanied children to their home countries. Included in this population are children who choose to return as well as those ordered to return. We recommend that return should be accompanied by effective reintegration programs that not only guarantee the safety of migrant children when they get home, but also foster conditions that allow children to remain safely in their communities with opportunities to support themselves.

Urgent Need for Reform

The United States has taken significant steps towards improving protections for unaccompanied children and should be commended for these actions. However, as the number of arriving children continues to rise to historic levels, the situation's urgency calls for further legal and policy reforms to ensure the rights and basic protections of this most vulnerable population.

Note on Methodology

A Treacherous Journey draws primarily on qualitative data that details the substantive and procedural treatment of children's immigration cases:

- Case records from unique CGRS asylum case database.
- Asylum, SIJS, and T and U visa case data collected by KIND through its pro bono representation program.
- Responses from attorneys who represent children to two surveys administered by CGRS and KIND.

The report also draws upon published studies, a review of relevant domestic laws and policies and available literature, and the authors' extensive experience training and assisting attorneys representing children. Finally, the report considers statistics provided by EOIR and by USCIS on children's immigration claims.

Key Overarching Recommendations

Counsel	No child should appear in any immigration proceeding without legal representation. Congress should enact legislation mandating the provision of legal counsel for unaccompanied children in deportation proceedings using a mix of private pro bono and appointed attorneys.
Best Interests of the Child	The “best interests of the child” must be “a primary consideration” in all procedures, actions, and decisions concerning unaccompanied immigrant children and principal child applicants made by a federal agency or court. Congress should enact legislation to require this standard. Legislators should also develop and enact a new form of immigration relief to prevent children from being deported to their home countries when a return is not in their best interests.
Child Advocates	All unaccompanied children are vulnerable and deserve dedicated child advocates. Congress should enact legislation to mandate that an independent child advocate be appointed for all unaccompanied children as soon as they are identified. In the interim, pursuant to its authority under the TVPRA, HHS should appoint child advocates for all unaccompanied children who come into its custody and are placed in removal proceedings.
Data	Protecting unaccompanied children requires an informed public. The U.S. government should make publicly available comprehensive statistical information and other data on unaccompanied children.
Post-release Services	The protection needs of unaccompanied children have shifted. The U.S. government’s unaccompanied children’s program should re-focus its resources on post-release services to reflect this.
Return and Reintegration	The countries that send the majority of child migrants to the United States have profound gaps in their child protection systems. The U.S. government should use its international development and migration assistance programs to help these governments, encouraging regional as well as national solutions to protect child migrants that involve both governmental agencies and civil society organizations. The U.S. government should support safe return and reintegration programs to help repatriated children remain safely and sustainably in their home countries.
Funding for Reforms	Immigration reform for children is an urgent need. Congress should appropriate all funds necessary to implement the recommendations set forth in this report.

Recommendations

The United States has taken significant steps towards improving protections for unaccompanied children and should be commended for these actions. However, as the numbers of arriving children continue to rise to historic levels, the situation's urgency calls for further legal and policy reforms to ensure the rights and basic protections of this most vulnerable population.

Substantive Protection

Asylum, Withholding of Removal, and Convention Against Torture

Child-Centered Regulations: DHS and DOJ should issue draft asylum regulations as expeditiously as possible that "take into account the specialized needs of unaccompanied alien children," as required by the TVPRA, and provide adjudicators with guidance on how to assess children's claims in a child-centered manner – taking into account age, development, maturity, mental health, and cultural factors, and granting each child the liberal benefit of the doubt.

Refugee Protection Act: Congress should enact Section 5 of the Refugee Protection Act of 2013, S. 645, which clarifies the definition of a particular social group and the evidentiary standard for proving nexus.

Until regulations are issued, EOIR and USCIS should make the 2009 UNHCR, Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)(2) and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees (hereinafter 2009 UNHCR Guidelines) binding on IJs, the BIA, and the USCIS Asylum Office (AO). DHS and DOJ should clarify that the 1998 legacy Immigration and Naturalization Service (INS) Guidelines for Children's Asylum Claims (hereinafter 1998 INS Children's Guidelines or U.S. Guidelines) are binding on Asylum Officers, and DOJ should make the 1998 INS Children's Guidelines binding on EOIR adjudicators.

The BIA should sua sponte reopen and vacate its decision in *Matter of S-E-G-*, 24 I. & N. Dec. 579 (BIA 2008), based on its failure to consider or apply the U.S. or UNHCR children's guidelines. In the alternative, the U.S. Attorney General should certify and vacate the decision.

Convention Against Torture Claims: DHS and DOJ should draft regulations setting out a child-sensitive framework for evaluating each element of the CAT.

Office of Chief Counsel's Litigation of Children's Protection Cases

- ICE Assistant Chief Counsel should be guided by, and adopt positions consistent with the 1998 INS Children's Guidelines and the 2009 UNHCR Guidelines in every child's asylum case. The Office of the Principal Legal Advisor for ICE should hold local Offices of the Chief Counsel accountable for lack of compliance.
- ICE should amend its June 17, 2011 memorandum on prosecutorial discretion to explicitly state that being an unaccompanied child is a positive factor for consideration of prosecutorial discretion, and that ICE should exercise prosecutorial discretion favorably in unaccompanied children's cases at every point of decision making.
- ICE Office of the Principal Legal Advisor should provide guidance to ICE Assistant Chief Counsel clarifying that it is not appropriate to offer settlement deals that restrict children to limited relief and benefits (e.g., CAT), when they may be eligible for more generous forms of relief that afford greater access to benefits (i.e., asylum), and encouraging agreements in advance of hearings to the most permanent, protective form of relief for which the child is eligible.

Initial Jurisdiction

- Congress should expand the TVPRA of 2008's initial jurisdiction provision to grant USCIS jurisdiction over all principal child asylum applicants, regardless of unaccompanied status.
- USCIS should make its updated procedures regarding initial jurisdiction over unaccompanied children's asylum claims retroactive to children who USCIS previously determined were not UACs under its prior procedures, but who would otherwise qualify as UACs under the updated procedures.
- USCIS should further clarify in its updated procedures which children qualify as UACs under the new policy, and should establish a specific procedure for transferring asylum claims pending before the immigration courts, the BIA, or the federal Courts of Appeals to USCIS.
- EOIR should revise its March 2009 Memorandum on implementation of the TVPRA to incorporate USCIS' updated procedures and to clarify that IJs should grant continuances or administratively close cases of children claiming UAC status. EOIR should also provide training to immigration judges on implementation of USCIS' updated procedures.

Work Authorization

- The asylum regulations required under the TVPRA of 2008 should exempt children who are principal asylum applicants from the 180-day asylum adjudication (or case completion) deadline and from stoppages to the asylum clock.
- Until the issuance of TVPRA regulations, EOIR should update its OPPM 13-02, The Asylum Clock, to clarify that because children are not subject to case completion requirements, children should not be asked to proceed with an expedited hearing in order to keep the asylum clock running. The OPPM should also clarify that a child's request for a continuance for good cause should not be considered a delay and should not stop the asylum clock.
- USCIS should produce internal guidance on calculating the asylum clock in cases of principal child applicants, clarifying that when adjudicating work authorization applications, any discrepancy between agency asylum clocks should be resolved in the child's favor.

One-Year Filing Deadline: Congress should pass legislation eliminating the one-year filing deadline.

Special Immigrant Juvenile Status

Identification of Children in the U.S. Foster Care System

- Congress should pass the Foster Children Opportunity Act, H.R. 2036, introduced in May 2013 by Representative Beto O'Rourke (D-TX), which would help ensure undocumented children in the child welfare system are identified and have a meaningful opportunity to apply for SIJS or other available forms of immigration protection.
- USCIS should enhance its outreach to and training of state court judges and local entities that encounter children who are potentially SIJS eligible. USCIS should permanently institutionalize and fund a position dedicated to state outreach and training on SIJS.

State Court Issuance of Predicate Orders for SIJS

- USCIS should issue guidance concerning the role of state courts in Special Immigrant Juvenile Status cases similar to the guidance issued to law enforcement agencies regarding T and U visa certification.
- States should create standard forms for the required factual findings for Special Immigrant Juvenile Status in order to emphasize the legitimacy of SIJS and the authority of state court judges to issue the special findings

State Court Records: USCIS should adopt regulations, consistent with the TVPRA, and, in the interim, issue guidance clarifying (1) that in cases in which a predicate order contains the requisite special findings, officers are not

authorized to request copies of state court records or additional evidence regarding the abuse, abandonment or neglect; and (2) that it is no longer the SIJS petitioner's burden to establish that SIJS was not sought primarily for immigration purposes.

Birth Records: USCIS should revise its proposed rules, and in the interim issue guidance to its adjudications officers, to clarify that SIJS petitioners may have difficulty obtaining desired documentation regarding their birth, and that USCIS will consider any credible relevant evidence to establish age and parentage in SIJS cases.

T and U Visas

Screening

- Congress should pass Representative Lucille Roybal-Allard's (D-CA) Child Trafficking Victims Protection Act, H.R. 2624, requiring enhanced training of CBP officers and the hiring of child welfare professionals to assist CBP with its screening function to identify children with protection concerns at the border.
- In the interim, the Administration should mandate participation of NGOs or persons with child welfare expertise in screening children encountered by Border Patrol and identified as UACs from contiguous countries.
- As mandated by the TVPRA of 2013, the GAO should promptly conduct a study on whether CBP screening and repatriation of UACs conforms to the requirements of the TVPRA of 2008.

Training: Federal, state, and local law enforcement officers, including employees in the child welfare system, should receive additional training to ensure that officers understand how to identify victims and the nuanced aspects of victimization.

Law Enforcement Certification: Congress should enact legislation to exempt U visa applicants under the age of 18 from the law enforcement certification requirement.

- In the interim, DHS should issue guidance to ICE and CBP officers encouraging them to provide law enforcement certification in cases in which individuals, and in particular children, have been the victims of crimes of which the officer has observed or received credible reports.
- In the interim, DOJ should issue similar guidance to U.S. attorneys and law enforcement officials.

Adjudication Delays and Eligibility for Permanent Residence

- Congress should enact legislation allowing children under 18 who are granted T and U visas to be considered eligible for permanent residency immediately.
- Congress should enact legislation mandating that T and U visa applications, similar to SIJS petitions, be adjudicated within 180 days of the date of the application.

Creation of a "Best Interests" Form of Relief

Congress should designate a new form of discretionary "best interests" relief that would halt removal proceedings and grant immediate permanent residency to unaccompanied immigrant children and principal child applicants in removal proceedings who are ineligible for or have been denied other forms of relief and for whom repatriation to their native country or country of last habitual residence is deemed contrary to their best interests. Immigration judge determinations should be guided by best interests recommendations that are provided by the child advocate appointed to the case.

Congress should enact legislation to require appointment of a child advocate for any principal child applicant seeking "best interests" relief.

Congress should amend INA § 244 to provide for derivative TPS for children under the age of 18 whose parents have TPS.

Congress should pass comprehensive immigration reform legislation that includes an expedited path to permanent residency for DREAMers and Little DREAMers, individuals who entered the United States as children and attended school.

Procedural Issues

Immigration Court Proceedings

Child-Sensitive Regulations: DOJ, in coordination with DHS, should adopt mandatory regulations that are binding on all immigration judges and which - as required by the TVPRA - better ensure that the specialized needs of unaccompanied alien children are taken into account in the procedural aspects of handling unaccompanied children's cases. The regulations should require provisions for mandatory pre-trial conferences to limit contested issues in children's cases, protections for children testifying, and a designated office or conference room for children testifying.

Specialization

- EOIR should designate IJs who specialize in children's cases. Specialization should be voluntary rather than assigned.
- EOIR should assign the following responsibilities to the newly appointed Assistant Chief Immigration Judge with a focus on vulnerable populations: play a significant role in the development of substantive and procedural regulations mandated by TVPRA 2008; develop other child-sensitive procedures or policies; develop and oversee the IJ training recommended below; and serve as a liaison for vulnerable populations – such as by holding quarterly meetings with stakeholders.
- The BIA should designate members who specialize in children's cases and place those members on a panel of specialists who hear all appeals of children's cases. Having BIA members who specialize would promote child-sensitive adjudication of asylum and other claims for relief and would facilitate ongoing training. Specialization should be voluntary rather than assigned.

Training

- EOIR should provide IJs and BIA members who hear children's cases with extensive ongoing training on child development, childhood trauma and its effects, and how to communicate with and elicit information from children. IJs and BIA members should also be trained on children's rights, and common harms affecting children.
- ICE should mandate that all Assistant Chief Counsel receive regular training by experts on child development, child welfare, mental health, domestic violence, sexual abuse, gang violence, and cultural competence, as well as on common harms affecting children.

Accountability: The Regional Assistant Chief Immigration Judges should be authorized to hold IJs accountable for failure to implement the 1998 INS Children's Guidelines, any of EOIR's OPPM, and the DOJ regulations to be issued pursuant to the TVPRA.

Prosecutorial Discretion: ICE Assistant Chief Counsel should exercise prosecutorial discretion favorably throughout every stage of a child's case and with respect to every decision made in a child's case.

Appointment of Child Advocates: DOJ should develop a memorandum of understanding with HHS/ORR, establishing a procedure by which immigration judges can request the appointment of a child advocate pursuant to the TVPRA.

Local Stakeholder Meetings: As currently happens in some jurisdictions, immigration judges responsible for children's

cases should host periodic roundtables in each jurisdiction with a broad range of stakeholders working with immigrant children.

USCIS Interview Procedures

Asylum

- USCIS should update the 1998 INS Children's Guidelines to take into account the 2009 UNHCR Guidelines.
- The Asylum Office should record all children's interviews so that, in cases referred to the immigration court, children and their attorneys can decide to provide the tapes to the immigration court in lieu of providing testimony anew. The tapes should not be admissible if the child does not agree to allow them into evidence. Asylum Headquarters should adopt a policy of reviewing tapes in children's cases for quality assurance purposes and to ensure that interviews are conducted in a child-sensitive manner.
- USCIS should revise its policies to accept videotaped testimony taken by child welfare experts at child advocacy centers, in lieu of interviewing children and/or encourage officers to rely on affidavits in lieu of oral testimony.

SIJS

- USCIS should revise its proposed rule to specify, and, in the interim, issue interim guidance clarifying that interviews generally are not necessary at either stage of a SIJS case. Interviews should only be scheduled when there is a specific question or concern regarding an eligibility requirement.
- USCIS should issue additional guidance to its officers clarifying appropriate lines of inquiry in SIJS cases and appropriate interview questions.

Training, Specialization, and Interviewing

- USCIS should designate specific asylum and field officers to specialize in adjudication of children's cases (including by self-designation) and provide those officers with significant additional training regarding children.
- USCIS should be commended for agreeing to the CISOMB recommendation to involve clinical experts in training of Asylum Officers and Field Officers and for quality assurance purposes, and should begin implementing this practice immediately.

Child Advocates: USCIS should develop a memorandum of understanding with HHS/ORR, establishing a procedure by which USCIS asylum and field officers can request the appointment of a child advocate pursuant to the TVPRA.

Comprehensive Services Before EOIR

Access to Comprehensive Services

- As it has done for detained children in many courts, EOIR should develop juvenile court dockets for released children in all cities to facilitate access to attorneys and child advocates for released children.
- EOIR should make comprehensive services available to UACs at juvenile dockets, including the facilitation of pro bono legal services and the appointment of child advocates.

Access to Legal Counsel

- Congress and relevant government agencies should allocate resources appropriate to children's legal and social service needs. Resources should be increased for the infrastructure to support children after release including placement with a pro bono attorney and child advocate as rapidly as possible, at the site where the child's case will be adjudicated.
- The unaccompanied child legal services program should be transferred from HHS to DOJ.
- On court dates for released children, EOIR should establish an office in the court building for legal services providers to enable children to meet with legal services organizations' staff on site, meet with pro bono attorneys, and receive Know Your Rights presentations and legal screenings. EOIR should establish a second

office in the same building, staffed by organizations that provide child advocacy services for vulnerable unaccompanied children. The Legal Orientation Program for Custodians (LOPC) should also be included in these services.

Scheduling of Cases to Ensure Efficiencies and Access to Counsel

EOIR should adopt regulations that facilitate pro bono representation by, for example, encouraging judges to provide adequate time for pro bono attorneys to prepare a child's case through the appropriate use of continuances.

Until such regulations appear, EOIR should hold immigration judges accountable for failure to follow the agency's Guidelines for Facilitating Pro Bono Legal Services, which encourages immigration judges to accommodate requests to continue or advance hearings and to give pro bono attorneys priority when scheduling cases, especially children's cases.

Rather than filing the Notice to Appear with EOIR while a child is detained - which starts the legal case at the site where the child is detained - ICE should file the NTA with the immigration court in the city to which the child is being released, thereby establishing venue at the outset with that court and avoiding the need to file change of venue requests.

Return and Reintegration

The Administrator of USAID, in conjunction with the Secretary of State, the Secretary of HHS, the Attorney General, international organizations, and NGOs in the United States with expertise in repatriation and reintegration, should create a program to develop and implement best practices and sustainable programs in the United States and within the country of return to ensure the safe and sustainable repatriation and reintegration of unaccompanied children into their country of nationality. Creation of these programs must be collaborative with a wide range of expert partners, as called for under the TVPRA of 2008.

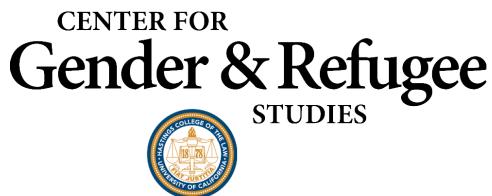
U.S. government return and reintegration programs should provide services that help youth find alternatives to re-migration and address the root causes of migration.

DHS and ORR should commit to establishing policies and procedures that help facilitate the safe return and reintegration of unaccompanied children in U.S. government custody, including timely communications about the child's departure date to ensure family reunification. DHS and ORR should make those policies and procedures readily and publicly available.

The United States and countries of origin should enter into and maintain regular dialogue about the return and reintegration of child migrants to ensure programming to help these children is effective and complementary. In addition, the United States, Mexico, Guatemala, Honduras, and El Salvador should develop a coordinated, regional approach to address issues related to child migration.

U.S. government reporting on return and reintegration programs should be robust and include detailed information about the workings of the program, comprehensive data, and best practices, as mandated in the TVPRA of 2008.

The U.S. government should collect and make publicly available comprehensive data and information about the children being removed from the United States to inform programming, including the region the child is returning to in the home country, the reason for migrating, and whether the child was represented in his/her immigration case.



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