

VIA ELECTRONIC MAIL

May 23, 2014

Secretary Jeh Johnson  
U.S. Department of Homeland Security  
Washington, DC

**Re: Recommendations to respond to influx of unaccompanied children**

Dear Secretary Johnson:

We, the undersigned four organizations, write to express concern regarding the use of Lackland Air Force base to house unaccompanied immigrant children as well as more general concern about the treatment of these minors in the United States. We are also alarmed by the lack of a comprehensive plan to address the reasons immigrant children come to the United States. As legal service providers to thousands of unaccompanied immigrant children detained across the United States, we are acutely aware of the legal, humanitarian, and child welfare issues that have arisen as a result of the influx of unaccompanied children from Central America and Mexico. We fear the number of unaccompanied children entering the United States will continue to rise unless the factors prompting them to flee their homes are addressed. It is critical that government agencies collaborate with legal service providers who have on-the-ground experience working with unaccompanied children to develop a system that can manage the increasing number of children crossing the border, while ensuring that these children have access to legal counsel and the ability to safely reunify with family or other guardians in the United States.

Based on our collective legal expertise serving unaccompanied children in the immigration system, we urge the Department of Health and Human Services (HHS), the Department of Homeland Security (DHS), and the Department of Justice (DOJ) to adopt the following 11 recommendations.

**Recommendations for HHS/Office of Refugee Resettlement (ORR)**

- 1. Develop comprehensive plans to manage the influx of unaccompanied children.** Too often in the past year, we have seen HHS/ORR respond to the increase in unaccompanied children by pushing for speedier releases of children, transferring children to “camps” to make room for other, more recently arrived children, or, as is happening now, detaining unaccompanied children at a military base. These short-term solutions are insufficient to cope with the dramatic increase in unaccompanied children. Even if children are held temporarily on military bases, HHS/ORR must expand their current shelter capacity to provide proper care for unaccompanied children. By relying on quick releases from custody and temporary, unlicensed shelter facilities to cope with the influx and overcrowding, HHS/ORR prevents unaccompanied children from accessing much needed legal and social service resources and places them at risk of being released to unsuitable caregivers. Any plan to house children in new locations should prioritize proximity and access to legal service providers.
- 2. Create a special legal response team, consisting of experienced legal service providers, to provide legal services to unaccompanied children on a rotating basis.** Working cooperatively, ORR should establish guidelines so that unaccompanied children in emergency shelters can access legal services within a specified period of time, and can be tracked as they are transferred to longer-term ORR facilities or directly released to family members. Recent reports<sup>1</sup> have shown that a

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<sup>1</sup> See, e.g., UNHCR, “Children on the Run,” Mar. 12, 2014, available at <http://www.unhcr.org/53206a3d9.html>; Center for Gender and Refugee Studies (CGRS) and Kids in Need of Defense (KIND), “A Treacherous Journey: Child

majority of unaccompanied children may be eligible for protection in the United States based on violence in their home countries. Know Your Rights (KYR) presentations and legal screenings are crucial to ensure that unaccompanied children can access legal protections and navigate the complicated immigration process upon release from custody. Since most local legal service providers will not have capacity to provide legal services to the dramatically increased number of unaccompanied children detained in their geographic area, special legal response teams are needed to fill the gap in coverage until a more permanent solution can be developed.

3. **Improve communications among ORR components and with other agencies.** As ORR expands and adjusts its capacity to shelter unaccompanied children, it must maintain strong communication with other agencies and stakeholders who are responsible for the various aspects of the children's cases. Organizations that provide legal services and shelter care to unaccompanied children are in the best position to determine how to meet the needs of the growing population of unaccompanied children. Likewise, both government agencies and legal service providers must have sufficient notice when children are brought within their jurisdiction to ensure access to counsel.
4. **Improve data collection on unaccompanied children.** HHS should improve its capacity to track unaccompanied children post-release to better understand the trends and needs of this growing population. HHS should also engage in data-sharing with other government agencies, such as DOJ, to better track an unaccompanied child's experience in the immigration system from apprehension to the resolution of the child's immigration case. Doing so will help government agencies better prepare for the ongoing migration of immigrant children.

### **Recommendations for DHS and DOJ**

5. **Recognize that children fleeing gang, family, and gender violence are eligible for protection under U.S. asylum law.** Asylum law has long recognized that individuals who fear persecution in their home countries on account of a characteristic they cannot or should not be required to change should receive protection in the United States. Children fleeing gang or gender violence in Central America are no different than adults fleeing religious or ethnic violence in another country. When rule of law is compromised in a child's home country and that child fears gang members will harm her for refusing to join the gang or fears sexual violence based on gender, that child fits within the traditional definition of asylum law. A recent line of decisions from the Board of Immigration Appeals has thrown asylum law into disarray regarding the definition of "membership in a particular social group," the basis on which most children seek asylum.<sup>2</sup> DHS should certify those decisions to the Attorney General, seeking a clear and workable definition of "membership in a particular social group" that is based solely on the immutable characteristics test first established by the Board in *Matter of Acosta*.<sup>3</sup>

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Migrants Navigating the U.S. Immigration system," Feb. 27, 2014, available at [http://www.uchastings.edu/centers/cgrs-docs/treacherous\\_journey\\_cgrs\\_kind\\_report.pdf](http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf); National Immigrant Justice Center, "Unaccompanied Immigrant Children, A Policy Brief from Heartland Alliance's National Immigrant Justice Center," Jan. 2014, available at <https://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20Policy%20Brief%20-%20Unaccompanied%20Immigrant%20Children%20FINAL%20Winter%202014.pdf>; Women's Refugee Commission, "Forced from Home: The Lost Boys and Girls of Central America," Oct. 2012, available at <http://womensrefugeecommission.org/forced-from-home-press-kit>.

<sup>2</sup> The most of recent of these decisions are *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. 20 (BIA 2014).

<sup>3</sup> For further background on this issue, NIJC has produced a practice advisory that is available here: [https://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20PSG%20Practice%20Advisory\\_Final\\_3.4.14.pdf](https://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20PSG%20Practice%20Advisory_Final_3.4.14.pdf).

- 6. Develop a system of orderly departure so children can migrate safely and legally to the United States.** Any response to the increase in unaccompanied children must recognize that children embark on treacherous journeys to the United States because conditions in their home countries are exceptionally dangerous. Attempting to prevent children from making the journey without first resolving the root causes of migration will only push their migration further underground and force children to take additional risks to avoid detection while in transit. Throughout history, the United States has responded to waves of irregular migration by developing structured channels for processing lawful migration and protection claims. DHS should process refugee applications at the U.S. embassy in the home countries of children fleeing persecution and should consider humanitarian parole applications for children in urgent and compelling circumstances. DHS should also create a family reunification parole program, similar to the one created for Cuba in 2007, to allow entry for children fleeing violence who are desperate to reunite with family members in the United States. These solutions would acknowledge the dangerous situations many of these children face in their home countries while providing an orderly way for them to reach family and safety.
- 7. Refrain from issuing Notices to Appear (NTAs) to unaccompanied children. Where NTAs are issued, institute a protocol by which DOJ, DHS and ORR coordinate venue for proceedings.** As long as unaccompanied children are not provided with appointed counsel, they should not be placed in removal proceedings. Children lack the capacity to represent themselves, which results in the issuance of removal orders against them despite the fact that they may be *bona fide* refugees or may be eligible for other forms of relief. Placing children in removal proceedings also burdens DOJ and DHS, who are not equipped to accommodate or respond to the special needs of children. Instead of placing children in removal proceedings, DHS, in collaboration with ORR, should advise the parents and guardians of released children that it is incumbent upon them to assist children in affirmatively seeking immigration protection for which they may be eligible. If NTAs must be issued, changes of address and venue should be coordinated by DOJ/EOIR and DHS/OCC. When a child is released from custody, these agencies should take appropriate action to change venue to the location of the child's permanent address. Removing the onus to change venue from the child will dramatically reduce clerical work for the EOIR, OCC, and the children and their advocates and minimize the prevalence of *in absentia* removal orders and/or costly and unnecessary trips by children back to their original venues in order to attend court.
- 8. Adopt a presumption in favor of prosecutorial discretion.** The DHS Office of the General Counsel should adopt a policy that presumes unaccompanied children merit prosecutorial discretion and should coordinate the issuance of deferred action when agreeing to administratively close or terminate removal proceedings. Likewise, immigration judges should be encouraged to robustly exercise their authority to administratively close or terminate the removal proceedings of unaccompanied immigrant children. Unaccompanied immigrant children frequently present compelling discretionary factors, such as risks to health or safety in the home country and a lack of any family there to provide care. Administratively closing or terminating unaccompanied children's cases reserves limited resources for higher priority cases.
- 9. Improve short-term custody conditions.** Customs and Border Protection (CBP) must develop enforceable short-term custody standards to ensure that unaccompanied children are held in appropriate conditions and not subjected to extreme temperatures, shackling, or physically or verbally abusive treatment. These standards should also hold individuals in violation accountable.
- 10. Expand appointment of counsel for unaccompanied children.** Through budget reallocation, the DOJ Executive Office for Immigration Review (EOIR) must strive to appoint counsel for all

children, including unaccompanied children. No child should have to navigate complex immigration court proceedings on her own without an attorney.

- 11. Provide Legal Orientation Programs for Custodians (LOPCs) for all custodians.** As unaccompanied children have increasingly less access to legal services while in ORR custody due to expedited release times, it is critical that custodians receive information about how to help the children in their custody navigate the legal system and to encourage compliance with immigration court orders.

While HHS/ORR, DOJ and DHS have made great strides in developing procedures for the protection of unaccompanied children, the dramatic increase in children entering the United States threatens to undermine this progress. Any responses to this increase must recognize the reasons why children abandon their home countries in the first place and preserve the fundamental rights of children to legal counsel, access to due process in the immigration system, proper housing and care, and to the extent possible, reunification with their families. By implementing these 11 recommendations, we believe that the administration can promote the efficient use of government resources while ensuring that unaccompanied children receive fair and humane treatment that recognizes they are children first and immigrants second.

We welcome the opportunity for further discussion. Please do not hesitate to contact Royce Murray at (312)718-5021 or [murray@heartlandalliance.org](mailto:murray@heartlandalliance.org).

Sincerely,

Heartland Alliance's National Immigrant Justice Center (NIJC)  
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Capital Area Immigrants' Rights (CAIR) Coalition  
American Friends Service Committee (AFSC)

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