



National Immigrant Justice Center
208 South LaSalle Street
Suite 1300
Chicago, IL 60604

P 312.660.1370
F 312.660.1505
immigrantjustice.org

VIA ELECTRONIC MAIL

April 16, 2014

Mr. Mark Greenberg
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services
mark.greenberg@acf.hhs.gov

Ms. Molly Groom
Acting Deputy Assistant Secretary
Office of Immigration and Border Security
U.S. Department of Homeland Security
molly.groom@hq.dhs.gov

Re: April 17 Unaccompanied Alien Children Strategy Listening Session

Dear Mr. Greenberg and Ms. Groom:

Heartland Alliance's National Immigrant Justice Center (NIJC) is pleased to contribute to the April 17 Unaccompanied Alien Children (UAC) listening session. NIJC and its network of 1,500 *pro bono* attorneys provide legal counsel and representation to nearly 10,000 immigrants each year, including thousands of unaccompanied children detained in the Chicago area. For the past 17 years, NIJC's Immigrant Children's Protection Project has provided legal counsel and representation to unaccompanied immigrant children. Currently, NIJC provides legal services to unaccompanied children held in nine Chicago-area shelters. NIJC visits each facility on a weekly basis to deliver "Know Your Rights" presentations, interview the children, and conduct legal assessments. NIJC represents detained unaccompanied children before the Chicago Immigration Court and represents released children who reside in the Chicago area in all forms of immigration relief.

In addition to direct legal services we provide to unaccompanied children, NIJC serves as the co-chair of the Migrant Children's Defense Collaborative (Collaborative), a coalition of non-governmental organizations committed to advocating for the legal rights of immigrant children. NIJC is also an active member of the Mexico/United States/Central American Working Committee on Migrant Children and Youth (Working Committee), which seeks to address the regional issues affecting unaccompanied immigrant children.

Through our work with thousands of detained unaccompanied children and our involvement in the Collaborative and Working Committee, NIJC is 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. NIJC is concerned that the number of unaccompanied children entering the United States will continue to rise unless the factors prompting them to flee their homes are addressed. In response to the unprecedented number of children entering the United States, it is critical that government agencies ensure that unaccompanied children have access to legal counsel and the ability to safely reunify with family or other guardians in the United States. Unaccompanied children, regardless of their immigration status or country of origin, must be treated as children first.

With this principle in mind, and based on NIJC's legal expertise in the area of unaccompanied children in the immigration system, we urge the Department of Health and Human Services (HHS), Office of Refugee

Resettlement (ORR), Department of Homeland Security (DHS), the Department of Justice (DOJ) and the Executive Office for Immigration Review (EOIR) to adopt the following 12 recommendations. These recommendations are consistent with recommendations made by the Collaborative and the Working Group. Implementing these recommendations will help address the dramatic increase in unaccompanied immigrant children entering the United States and being placed into removal proceedings, while upholding basic child welfare principles and ensuring unaccompanied children are treated as children.

Recommendations for HHS/ORR

- 1. 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. For example, when a new facility for unaccompanied children is established, the immigration court with jurisdiction over that facility must have sufficient notice of the new facility to ensure it has capacity to incorporate those children into existing court dockets or the ability to create additional dockets. Likewise, legal service providers and funders of legal service providers for unaccompanied children must receive sufficient notice of new or expanded facilities to ensure legal services providers have time to modify staffing to serve the increased numbers of detained children.
- 2. 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 fully understand the breadth of an unaccompanied child's experience in the immigration system.

Recommendations for DHS

- 3. Adopt a presumption in favor of prosecutorial discretion.** The DHS Office of Chief 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. Unaccompanied children are not "priority" targets for enforcement and frequently present compelling discretionary factors. Administratively closing or terminating their proceedings allows agency resources to focus on those individuals who are high priority.

An immigration judge referred two young sisters from El Salvador to NIJC after they appeared *pro se*. The sisters' parents had come to the United States many years before in hopes of providing a better life for their daughters and had left them behind to be cared for by relatives. However, unbeknownst to them, these relatives neglected and physically abused the sisters. To escape the abuse, the sisters left home and traveled to the United States to reunite with their parents. At the border, Immigration and Customs Enforcement (ICE) apprehended them and placed them into removal proceedings. After determining the sisters were at risk of being deported back to a country where they had been harmed and where there was no one to care for them, NIJC identified a *pro bono* team to represent the sisters and persuaded the Office of Chief Counsel and the immigration judge to agree to administratively close the sisters' removal proceedings. The sisters can now remain in the United States with their parents and move towards recovery from the abuse they experienced in El Salvador.

- 4. Ensure that Notices to Appear (NTA) for unaccompanied children are timely filed.** If DHS determines it must place an unaccompanied child into removal proceedings, DHS should ensure the child's NTA is timely filed with the immigration court to avoid creating confusion for the child. Timely filing of NTAs will decrease the likelihood of a child receiving an *in absentia* order because her removal proceedings were not initiated until months after her release from ORR custody.

5. **Refrain from targeting the custodians of unaccompanied children for immigration enforcement.** ICE should not seek to detain and place into removal proceedings the adults who assume custody of unaccompanied children. Doing so deters individuals from agreeing to assume custody of children, which in turn will delay the release of children from ORR custody. It is also inconsistent with the parental interest directive and creates safety risks for unaccompanied children who may have no one else to care for them if their custodian is detained.
6. **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.

Paola* is a teenager from Guatemala who was abandoned by her father and abused by her mother. While in CBP custody before being flown to an ORR shelter in Chicago, a CBP officer told her that her plane would blow up on the way to Chicago and implied she would die there by making a throat cutting motion. Paola felt threatened and afraid because of the officer's comment, which other children have reported hearing as well.

*Pseudonym

7. **Improve transparency and monitoring of detention facilities for unaccompanied children.** Non-governmental organizations should be granted access to all facilities where unaccompanied children are held, including jails, shelters, detention centers, and CBP processing centers.

Recommendations for DOJ/EOIR

8. **Allocate more resources for the immigration courts and establish dedicated children's dockets for released and detained children.** As the number of unaccompanied children in removal proceedings increases, courts should be allocated sufficient resources to manage larger unaccompanied children's dockets and related clerical work produced as unaccompanied children change venue from the place of detention to the place of release. Ensuring sufficient resources to timely process paperwork will decrease the likelihood of a child receiving an *in absentia* order because she was confused about the date or location of her court hearing or unable to travel a great distance to attend court.
9. **Administratively close or terminate unaccompanied children's cases.** Immigration judges should be encouraged to robustly exercise their authority to administratively close or terminate the removal proceedings of unaccompanied immigrant children. Unaccompanied immigration children frequently present compelling discretionary factors, such as risks to the child's 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 court resources for higher priority cases.
10. **Expand appointment of counsel for unaccompanied children.** Through additional appropriations, 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.

Jessica* is a 15-year-old girl from Honduras. Her father abandoned her and when she was five years old, gang members murdered her mother. Jessica moved into her grandmother's home, but her grandmother's husband frequently hit her. Based on her mother's death and father's abandonment, NIJC determined that Jessica is eligible for Special Immigrant Juvenile Status and should be able to obtain permanent residency in the United States. However, after her release to family in South Carolina, NIJC was unable to find an attorney able to help her near her new home. Without an attorney, it is unlikely Jessica will be able to successfully pursue immigration relief.

*Pseudonym

11. **Provide more training and guidance for immigration judges.** Immigration judges need additional training and written guidance regarding the treatment of unaccompanied children in court and the adjudication of their cases. Such guidance could come through the publication of an updated, in-depth Operating Policy and Procedure Memorandum (OPPM). Current guidance, produced well before the recent influx of unaccompanied children, is insufficient. Specific training should also be provided to judges handling dedicated children's dockets.
12. **Provide Legal Orientation Programs for Custodians (LOPCs) for all custodians.** After children are released from ORR custody, NIJC frequently receives calls from custodians seeking assistance in children's cases. 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.

While the overall treatment of children in the U.S. immigration has improved over the course of the past decade, the protections for these children have deteriorated as the number of unaccompanied children entering the United States has increased in recent months. By implementing the recommendations set forth above, 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 rmurray@heartlandalliance.org or me at (312) 660-1351 or mmccarthy@heartlandalliance.org.

Sincerely,



Mary Meg McCarthy
Executive Director

cc: Tricia Swartz, Office of Refugee Resettlement, HHS
Esther Olavarria, DHS
Felicia Escobar, White House Domestic Policy Counsel
Tyler Moran, White House Domestic Policy Counsel
Juan Osuna, Executive Office for Immigration Review, DOJ
Ana Kocur, Executive Office for Immigration Review, DOJ