



Statement for the Record by Kids in Need of Defense (KIND)

“CBP Oversight: Examining the Evolving Challenges Facing the Agency”

Senate Committee on Homeland Security and Governmental Affairs

June 25, 2020

Kids in Need of Defense (KIND) is the leading national organization working to ensure that no child faces immigration court alone. KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 20,000 unaccompanied children in removal proceedings, trained over 50,000 attendees on the pro bono representation of these children, and formed pro bono partnerships with more than 650 corporations, law firms, law schools, and bar associations. KIND also helps children who are returning to their home countries to do so safely and to reintegrate into their home communities. In addition, we seek to change law and policy to improve the protection of unaccompanied children in the United States and to build a stronger regional protection framework throughout Central America and Mexico.

KIND strongly opposes the Department of Homeland Security (DHS)’s illegal expulsions of unaccompanied children and Customs and Border Protection (CBP)’s role in implementing them. Under indefinite Centers for Disease Control and Prevention (CDC) and DHS entry restrictions, DHS has summarily returned to Mexico and Central America over 2,000 unaccompanied children who arrived at the U.S. southern border.¹ These expulsions violate the bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)² by stripping children of vital legal protections and any meaningful opportunity to seek humanitarian relief before being returned. As a consequence, expelled children face a heightened risk of human trafficking and persecution—precisely the outcomes that the TVPRA was intended to prevent. Though DHS has used the COVID-19 pandemic as a pretext for its actions, medical experts have made clear that this policy lacks a valid public health rationale and that the U.S. government is fully capable of upholding our laws and humanitarian values while also protecting public health and safety.³

By helping carry out these expulsions, CBP bears direct responsibility for contravening the TVPRA. Under the Act, the U.S. government must screen unaccompanied children to determine whether they are at risk of trafficking or fear return to their home countries. The TVPRA further requires that DHS transfer unaccompanied children from noncontiguous countries, as well as unaccompanied children from contiguous countries who are at risk of trafficking, fear return, or are unable to make an independent decision about withdrawing their application for admission, into ORR care and custody and place them into full immigration court proceedings. Yet CBP is flouting these requirements by summarily returning children to their country of origin or pushing

¹ See, e.g., Lauren Villagran, “Despite coronavirus, children are still arriving at the border. They’re being turned away” *El Paso Times* (Jun. 10, 2020); <https://www.elpasotimes.com/story/news/2020/06/10/border-patrol-rejects-migrant-children-cdc-authority-covid-19/5274691002/>.

² P.L. 110-457.

³ Priscilla Alvarez, “Health experts slam Trump administration’s use of public health law to close border” *CNN* (May 18, 2020); <https://www.cnn.com/2020/05/18/politics/border-closure-public-health/index.html>.

them back into Mexico without any consideration of their safety. In fact, of the more than 1,000 unaccompanied children encountered by DHS at the U.S. southern border in May, only 39 were referred to ORR.⁴

CBP's disregard for these statutory protections is squarely linked to the enhanced danger—not least of human trafficking—to which arriving unaccompanied are now exposed. By omitting screenings of these children for trafficking concerns, for instance, CBP fails to observe and respond to any evidence that they were trafficked into the United States for commercial sex or forced labor or would be returned into trafficking situations if expelled. Moreover, because CBP has refused to apply the legal definition of “unaccompanied alien child” provided for in the Homeland Security Act—as addressed in more detail below—it has incentivized the rapid return of children to Mexico together with unscreened adults who could pose a danger to them. Additionally, expelled children are not benefitting from the skilled and protective screenings performed by attorneys and social workers specially trained to identify protection needs among this vulnerable population. CBP's website states that it is “uniquely situated to deter and disrupt human trafficking,”⁵ but the bureau's contributions to the expulsions of unaccompanied children makes clear that it has abdicated any such ‘unique’ position. Ultimately, CBP's defiance of Congress's anti-trafficking requirements does not deter or disrupt human traffickers at all—it emboldens them.

No less troubling, CBP has elected not to adopt a readily available measure that would shield unaccompanied children from these harmful expulsions. The CDC and DHS orders underlying expulsions limit entry at the U.S. southern border to “essential travel.” Notably, however, the orders allow for exceptions when appropriate. DHS has already designated a host of traveler populations, including students and truck drivers, “essential” and thereby exempt from the entry restrictions, while also expressly authorizing CBP to designate additional populations in this manner.⁶ Yet CBP has failed to deem unaccompanied children “essential.” CBP's refusal to follow the TVPRA and exercise its authority to exempt unaccompanied children from expulsions is wrong and dangerous for children. The TVPRA, after all, reflects a bipartisan determination that unaccompanied children's often life-and-death pursuit of protection is so imperative as to warrant a unique array of due process safeguards. In the strongest terms, then, KIND rejects CBP's position that the safety of unaccompanied children is “non-essential.”

Alarming, a leaked CBP memorandum guiding agents and officers' implementation of expulsions reveals that CBP has gone so far as to fashion the term “unaccompanied juvenile”—one that appears nowhere in relevant statute—in order to bypass the existing definition of an “unaccompanied alien child” in the Homeland Security Act of 2002 (HSA)⁷ and the corresponding legal obligations in the HSA and the TVPRA. On an immediate level, this invented term facilitates DHS's expulsion of unaccompanied children under the pretext of returning family units. More

⁴ Camilo Montoya-Galvez, “Just 39 unaccompanied migrant children avoided Trump's border expulsions in May” *CBS News* (Jul. 18, 2020); <https://www.cbsnews.com/news/unaccompanied-migrant-children-trump-expulsion-border-policy/>.

⁵ Customs and Border Protection, “Human Trafficking” (Jan. 9, 2020); <https://www.cbp.gov/border-security/human-trafficking>.

⁶ DHS Order, “Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico” (May 19, 2020); https://www.dhs.gov/sites/default/files/publications/20_0519_as1_fm_us-mexico-border.pdf.

⁷ 6 U.S.C. 279(g)(2).

fundamentally, by seeking to administratively limit application of the “unaccompanied alien child” definition codified by the legislative branch, CBP is aiming to effectively extinguish bipartisan statutes core to the protection of unaccompanied children.

In view of these grave concerns, KIND calls upon CBP to: (1) exempt unaccompanied children from the CDC and DHS entry restrictions by declaring them “essential” and cease summary removals of children under the CDC order; and (2) fully conform to all TVPRA and HSA requirements by, among other actions, performing full protection screenings and making referrals to ORR as mandated under the TVPRA, and by adhering to the HSA’s definition of “unaccompanied alien child.” CBP, and DHS as a whole, can and should process children’s protection claims in accordance with the law while still safeguarding the health of these children and of the public at large.