



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

**“The Way Forward on Homeland Security”**

**House Committee on Homeland Security**

**March 17, 2021**

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 in pro bono representation of these children, and formed pro bono partnerships with over 670 corporations, law firms, law schools, and bar associations. KIND’s social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. And the organization’s programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey.

Through this work, KIND has witnessed the unique vulnerability and resilience of children in search of safety and the critical importance of policies and safeguards that prioritize children’s well-being and best interests as they seek protection in the U.S. immigration system. Without a parent or legal guardian, unaccompanied children have traveled hundreds or thousands of miles to the United States to escape threats to their lives or safety, including severe violence, abuse, and human trafficking. Many of these dangers have become only more acute as a result of the global pandemic and recent natural disasters as well as policies in recent years that have returned children and families fleeing for their lives to danger or forced them to wait in Mexico to request U.S. protection. Unaccompanied children face further barriers following their arrival to the U.S. as they navigate complex laws and a system largely designed for adults to pursue life-saving humanitarian protection, in many cases without an attorney to assist them.

These unique vulnerabilities underscore our nation’s moral and legal responsibilities to ensure that all unaccompanied children are treated fairly and humanely at every point in our immigration system--from their reception at the border to the adjudication of their cases for legal protection. Upholding these commitments will require a shift away from past policies aimed at punishing or deterring children seeking protection and toward a fundamentally humanitarian approach that extends needed procedural and substantive safeguards for children as they pursue protection while meaningfully addressing the root causes that continue to force children to flee their homes and countries. These efforts will require a whole of government approach, with the Department of Homeland Security (DHS) playing a pivotal role in advancing policies and reforms that protect children and foster a fair, orderly, and efficient immigration system.

We are mindful of the significant challenges of the current moment, in which DHS must work to unwind harmful policies and rebuild a protection system decimated by the past Administration while ensuring safe processing and shelter for children currently in harm’s way. We are encouraged by recent efforts by DHS that mark welcome steps toward a system that treats unaccompanied children as children first and foremost. These measures include the rescission of a harmful information-sharing policy with the

Department of Health and Human Services (HHS) that deterred sponsors from coming forward to care for unaccompanied children, the agency's commitment to the new Interagency Taskforce on the Reunification of Families who were forcibly separated by the Trump Administration, the reopening of the Central American Minors (CAM) program, and coordination with HHS on the co-location of HHS professionals in border facilities to speed the release of unaccompanied children from Customs and Border Protection (CBP) custody and their reunification with family members. At the same time, we remain deeply concerned about the well-being of thousands of unaccompanied children currently in CBP custody at the border, and policies that continue to imperil children and families by impeding their fair access to protection in the U.S. immigration system.

We stand ready to assist DHS in ensuring the safe reception, care, and treatment of unaccompanied children. This statement focuses on the following key areas of urgent need and opportunity: (1) the humanitarian reception of unaccompanied children at the border, including through the hiring of child welfare professionals in CBP facilities and compliance with the Trafficking Victims Protection Reauthorization Act (TVPRA); (2) ensuring fair access to protection for children in proceedings, including through the provision of legal counsel; (3) the reunification of separated families and the creation of redress options and pathways to permanent legal status; and (4) the expansion of regional protection initiatives and efforts to address root causes of child migration.

## **I. Humanitarian Reception of Children at the Border**

### *Processing Under the TVPRA and the Need to Terminate Title 42*

In recent weeks, the unique needs of unaccompanied children have assumed stark focus as thousands of unaccompanied children seek protection at the U.S. Southern border, forced to flee severe and ongoing violence and other dangers in their countries and the region. Many of these children are increasingly vulnerable as a result of having been previously returned to harm or required to delay their search for protection as a result of prior Administration policies such as Title 42 that expelled more than 13,000 unaccompanied children from the U.S., purportedly to protect public health. Public health experts, however, have made clear that there is no sound public health basis for expelling unaccompanied children and asylum seekers,<sup>1</sup> and the policy remains the subject of legal challenge in federal court.<sup>2</sup>

While the COVID-19 pandemic presents unique challenges and requires numerous considerations and precautions, it does not relieve the United States of its responsibility to comply with legal protections for unaccompanied children set forth in the TVPRA or other relevant standards, including those in the *Flores* Settlement Agreement and CBP's own National Standards on Transport, Escort, Detention, and Search (TEDS). Compliance with these requirements is critical to ensuring the appropriate processing, care, and treatment of children in the immigration system and must remain an immediate and continued priority of the Biden Administration.

We commend the Biden Administration for beginning to unwind the unlawful Title 42 policy by resuming processing of unaccompanied children pursuant to the TVPRA, yet we remain concerned that the Title 42 policy continues to force families and others to return to life-threatening danger and about reports that the Administration is considering applying Title 42 to 16- and 17-year old unaccompanied children.<sup>3</sup> As defined in the Homeland Security Act of 2002, an unaccompanied child is a child who

---

<sup>1</sup> See, e.g., Letter to HHS Secretary Azar and CDC Director Redfield Signed by Leaders of Public Health Schools, Medical Schools, Hospitals, and Other U.S. Institutions (May 18, 2020), <https://www.publichealth.columbia.edu/public-health-now/news/public-health-experts-urge-us-officials-withdraw-order-enabling-mass-expulsion-asylum-seekers>.

<sup>2</sup> *PJES v. Mayorkas*, 1:20-cv-02245 (D.D.C.)

<sup>3</sup> Hamed Aleaziz, *Homeland Security Officials Considered Using A Trump-Era Policy To Turn Back Unaccompanied Teens At The Border* (Mar. 11, 2021), BuzzFeed News, <https://www.buzzfeednews.com/article/hamedaleaziz/unaccompanied-teen-immigrants-border-policy-options>.

does not have a parent or legal guardian in the U.S. or available to provide care and custody, does not have lawful immigration status, and has not yet reached 18 years of age.<sup>4</sup> Neither the definition of an unaccompanied child nor the TVPRA's protections can be altered or dispensed with based on policy priorities.

We urge DHS and the Biden Administration to terminate the Title 42 policy in its entirety and to make clear that all unaccompanied children will be processed consistent with the TVPRA and afforded the legal protections required under federal law for the duration of their immigration proceedings.

To date, many unaccompanied children remain unable to access protection at U.S. ports of entry due to additional restrictions related to the COVID-19 pandemic. KIND is deeply concerned that as a result, unaccompanied children are being forced to undertake even more dangerous routes in search of protection in the U.S. and become increasingly vulnerable to harm and exploitation. We recommend that DHS immediately issue a policy clarifying that all unaccompanied children will be processed pursuant to the TVPRA at ports of entry and wherever they are encountered to ensure compliance with the law and children's safety.

### *Children in CBP Custody*

Delayed access to protection for thousands of unaccompanied children due to restrictive and unlawful policies of the Trump Administration, coupled with the need for measures to prevent spread of COVID-19, has strained the capacity of HHS' Office of Refugee Resettlement's (ORR) shelter facilities as well as CBP's border facilities. We are encouraged by several recent actions of the Biden Administration to expand the ability of DHS and HHS to appropriately process, care for, and house unaccompanied children. These efforts include opening new CBP processing facilities for children and families, deploying the Federal Emergency Management Agency (FEMA) to support HHS in meeting intake and shelter needs, and working with HHS to co-locate HHS professionals in CBP facilities to eliminate delays in reunifying unaccompanied children with sponsors and to ensure sufficient bedspace to house newly arriving unaccompanied children. We strongly support efforts to safely receive and care for unaccompanied children while in temporary DHS custody and urge DHS to continue thinking creatively about ways to ensure the expeditious transfer of unaccompanied children to ORR and their reunification with family members.

Importantly, despite DHS' current efforts, conditions for unaccompanied children at the border remain concerning. Thousands of unaccompanied children are being held in crowded CBP hold rooms and facilities originally designed for adults and for only short-term use. More than 3,000 unaccompanied children have been held in CBP custody for longer than the 72-hour limit prescribed by law and CBP's own standards, with insufficient access to food, hygiene, or even light.<sup>5</sup> These conditions highlight the limits and weaknesses of the immigration system's current infrastructure, capacity, staffing, and policies to meet the unique needs of children, many of whom are of tender age and have survived significant trauma and violence.

### *The Need to Hire Licensed Child Protection Professionals*

Safeguarding the health and well-being of children at the border requires that child-appropriate procedures, care, and staffing be prioritized through the placement of humanitarian and child welfare experts at the border. While DHS has begun these efforts through coordination on the co-location of

---

<sup>4</sup> Homeland Security Act of 2002, 6 U.S.C. § 279(g)(2).

<sup>5</sup> Camilo Montoya-Galvez, *Backlog of migrant children in Border Patrol custody soars to 4,200, with 3,000 held past legal limit* (Mar. 15, 2021), CBS News, <https://www.cbsnews.com/news/immigration-migrant-children-border-patrol-custody-4200-past-legal-limit/>.

HHS professionals at the border to expedite the reunification process, child welfare professionals are also needed more generally to oversee the screening and care of children in CBP custody, from ensuring the provision of adequate food, water, and hygiene necessities, to conducting protection screenings required by the TVPRA. These tasks should be performed by licensed social work professionals who have the requisite training and experience in the care, development, and welfare of children, not law enforcement professionals. In addition to safeguarding children, child protection professionals can free up CBP officers to perform the law enforcement functions for which they are specially trained.

Recognizing this need, Congress directed DHS to hire child welfare professionals at Southern land border CBP facilities during FY2020.<sup>6</sup> To date, DHS has yet to comply with this directive--a failing that defies congressional will, and in the process, endangers the safety and well-being of children in DHS custody. The need for professionals with expertise in caring for children is particularly critical amid current challenges.

DHS must immediately comply with this requirement and hire child welfare professionals in all of its Southern border facilities.

### *Advancing a Humanitarian Model for Reception of Children*

These measures should be complemented by broader efforts to enlist a nongovernmental humanitarian actor to coordinate with DHS and HHS in ensuring the appropriate reception, screening, and care of children who arrive to the United States at or between ports of entry. DHS' recent deployment of FEMA to assist with the immediate needs of DHS and HHS is an important first step. Efforts to formalize a humanitarian reception model for the long-term should continue beyond the current response and involve outreach to and engagement with nongovernmental humanitarian organizations.

As part of these efforts, DHS, in collaboration with ORR, should work to modify its border facilities to ensure the availability of child-friendly spaces for temporary processing, designated areas in which children can be screened by child welfare professionals in a confidential and child-appropriate manner, basic hygiene accommodations, and meeting spaces for in-person Know Your Rights presentations and other legal assistance by nongovernmental organizations. In addition, DHS should work to improve accountability and oversight of CBP's compliance with legal requirements and standards in the TVPRA, *Flores*, and TEDS by providing for access to CBP facilities and monitoring by independent third parties, including nongovernmental organizations.

## **II. Ensuring Fair Access to Protection for Children in Proceedings**

In addition to its role in receiving children arriving to the U.S., DHS has a vital role in upholding children's rights and ability to seek protection and to have their legal cases fully and fairly heard, both in immigration court and before U.S. Citizenship and Immigration Services (USCIS). Many unaccompanied children have claims for humanitarian protection such as asylum, Special Immigrant Juvenile Status, or visas for victims of severe crimes or human trafficking. The TVPRA provides several procedural protections to assist children in navigating the immigration system, including an opportunity to have asylum claims first heard by USCIS in a non-adversarial asylum interview, rather than in immigration court, access to counsel through HHS, and exemption from the one-year filing deadline for asylum claims, among other protections.

In recent years, however, several policies of the Trump Administration have impeded access to these

---

<sup>6</sup> See H. Rep. 116-180 (incorporated by reference into Joint Explanatory Agreement at <https://docs.house.gov/bills/thisweek/20191216/BILLS116HR1158SA-JES-DIVISION-D.pdf>).

critical protections and prevented unaccompanied children from fairly accessing legal relief for which they are eligible, risking the return of children to harm and the integrity of the immigration system. Among these policies are measures that narrowed the discretion of immigration judges to administratively close, continue, or terminate cases to allow children time to find an attorney, prepare their legal cases, or apply or receive decisions on applications for humanitarian protection that are adjudicated by USCIS. Other measures sought to deprive unaccompanied children of the TVPRA's procedural protections if they reunified with a parent or turned 18, contrary to the intent of the TVPRA and despite these children's continued vulnerability. The Trump Administration continued these efforts even amid the COVID-19 pandemic, moving forward with proceedings, deportations, and expulsions of unaccompanied children without regard to risks to the health and safety of children, federal government staff, and the public, or the fairness of children's proceedings.

### *TVPRA Protections and Access to Legal Representation*

DHS must take immediate steps to ensure that unaccompanied children's legal rights and safety are fully upheld, including during the COVID-19 pandemic. As a critical part of these efforts, DHS must ensure that all unaccompanied children are afforded the protections provided by the TVPRA—from initial processing at the border through the conclusion of their immigration proceedings. We urge DHS to coordinate with DOJ to promulgate regulations to make clear that once a child is determined to be an unaccompanied child pursuant to the legal definition that all protections and procedures outlined in the TVPRA continue for the full duration of their legal cases, regardless of whether the child turns 18 or is reunified with a parent.

DHS should also make clear and concerted efforts to improve the fairness of proceedings by supporting legal representation of unaccompanied children in any immigration proceedings or interviews before USCIS. The U.S. Citizenship Act of 2021 includes important provisions that would provide legal representation to all unaccompanied children in immigration proceedings. These provisions are critical, as more than half of unaccompanied children do not have attorneys to represent them in immigration court. DHS should support these efforts and also ensure that DHS trial attorneys consider the best interests of children when managing cases and in all decisions and consider joining any requests by children for additional time or to close or terminate cases where necessary to obtain representation or otherwise ensure due process.

Additionally, to give full effect to the TVPRA's protections, USCIS should make efforts to ensure that applications for Special Immigrant Juvenile Status (I-360) are adjudicated within the statutorily required timeframe of 180 days from the date of filing and similarly ensure that all other applications and petitions filed by unaccompanied children are timely and fairly adjudicated. Troublingly, many unaccompanied children who have been found eligible for Special Immigrant Juvenile Status remain vulnerable to deportation as they await visas to be able to adjust their status. We recommend that DHS grant deferred action to all unaccompanied children with approved I-360 applications to prevent the deportation of children for whom DHS has determined that return to their countries of origin is not in their best interests and to enable their access to employment authorization, which often serves as a form of identification needed to obtain basic support services and assist integration into their communities.

More broadly, we recommend that DHS create policies that prioritize and consider children's best interests in all of the agency's functions and actions. We urge additional safeguards during the pandemic, including the postponement of all immigration proceedings for unaccompanied children, unless requested by the child's attorney and in the child's best interests. We similarly recommend a pause on deportations of unaccompanied children and that any voluntary departures only be carried out if requested by the child's attorney and if child welfare experts have determined it to be in the child's best interests.

### **III. Reunifying Separated Families and Extending Redress and Permanent Protection**

The forced separation of more than 3,000 families pursuant to the Zero Tolerance policy and other measures has caused severe and lasting harm to children and families and placed them in grave peril. Hundreds of families have yet to be reunified, and many children and families have been deported or remain at risk of deportation to danger. It is incumbent upon the Biden Administration to undertake immediate efforts to protect these families and to provide services, redress, and pathways to permanent legal status to help them begin to heal and to achieve enduring safety and stability. We are encouraged by the recent establishment of the Interagency Taskforce on the Reunification of Families and stand ready to assist the Taskforce and the Administration as a whole in their efforts, which must include not only reunifying families but doing everything possible to ensure their permanent protection and well-being, to prevent future separations, and to ensure accountability for the grave harm that was caused.

Specifically, we recommend that the Taskforce provide funding and resources to support the work of the nonprofit Steering Committee recognized by the Court in the *Ms. L* litigation to help conduct outreach to and to locate affected families and implement policies to ensure that parents can return to the U.S. swiftly and safely to reunify with their children. Importantly, however, reunification alone is not sufficient. The Taskforce—and the whole of government—must provide immediate protection from deportation to separated parents and children and make available options for permanent protection and legal status, including through support of legislative proposals in Congress. All separated parents and children must receive compensation for the pain and suffering that was inflicted upon them and have free access to mental health services and other critical supports to help them work through the grave trauma they have experienced. The Administration must work, in collaboration with stakeholders serving children and families, to create policies and safeguards to ensure that no family is forcibly separated for the purpose of deterrence or wrongfully torn apart in the future.

### **IV. Advancing Regional Protection and Addressing Root Causes**

Ensuring the protection of unaccompanied children requires not only creating child-sensitive protections and policies in the U.S., but meaningfully addressing drivers such as gang violence, gender-based violence, abuse, and other threats that force children to flee in search of safety. The Trump Administration met these realities with cruel deterrence measures that only heightened the risks to unaccompanied children and forced them to remain in or return to danger. Rather than closing the door on the most vulnerable, the Biden Administration must ensure access to protection and immediately restore and expand refugee processing and resettlement programs, while providing critical foreign and development assistance to civil society organizations to address root causes. This includes support of violence prevention programming, including those focused on gender-based violence, and capacity building for national child welfare and protection systems.

#### *Central American Minors (CAM) Program and Expanded Refugee Processing and Protection*

We are encouraged by DHS' recent announcement of the restarting of the Central American Minors (CAM) program, which was first created in December 2014 but was terminated by the Trump Administration in November 2017. CAM previously allowed certain children from El Salvador, Guatemala, and Honduras with a parent lawfully present in the U.S. the opportunity to be considered for refugee resettlement while "in country," without having to undertake dangerous journeys to the United States. Despite the important aims of the initial program, narrow requirements limited access to the program by many children in need. We welcome the recent reopening of CAM for eligible applications that were closed upon the program's termination in 2017, and we urge DHS to act swiftly to expand the program and its criteria to new applicants to make this pathway available to additional

children as soon as possible.

Several improvements can help the program better achieve its goals and provide meaningful protection to children in need.<sup>7</sup> Among these, we recommend expanding eligibility for CAM to include children with trusted relatives such as aunts, uncles, or grandparents, who can care for them, regardless of their immigration status. We similarly urge that decisions on applications and the process move expeditiously so children are not forced to remain in dangerous circumstances to await relief. To ensure the program's success, DHS should work in collaboration with other federal agencies to ensure children applying for CAM have the information and support they need as they go through the process, including legal information and assistance, and safe shelter, and that outreach efforts reach children in rural villages, children with disabilities, and children who do not speak Spanish. We similarly urge the Administration to assist in expanding family-based resettlement programs such as the Protection Transfer Agreement (PTA), which serves children and families in imminent danger by allowing them to apply and be vetted for refugee resettlement in the U.S. and other countries. We look forward to collaborating with DHS and the Biden Administration to help restore the U.S.' leadership in global refugee resettlement and the protection of unaccompanied children.

## Conclusion

In recent years, a range of deterrence policies cruelly targeted unaccompanied children and protections for them, putting the most vulnerable in the immigration system at even greater risk of harm and exploitation. DHS faces critical challenges in undoing the Trump Administration's legacy of harmful policies, ensuring the fair and humane treatment of all who arrive to the U.S., and charting a new path that centers the needs and best interests of children throughout the immigration system. This will require concerted efforts by the agency and all of government to address the safety and well-being of children at all points—from their reception at the border to their legal proceedings and measures to address the root causes that forced them to flee their countries of origin. We are encouraged by recent efforts of DHS to begin this vital work and look forward to working with DHS to improve child-appropriate reception, care, and treatment of children and to ensure that all unaccompanied children receive the protections afforded to them by the TVPRA and fair access to protection in the U.S.

---

<sup>7</sup> See, e.g., KIND, *Thwarted Potential: The Need to Revive and Expand the Central American Minors (CAM) Program As a Key Path to Protection for At-Risk Unaccompanied Children*, [https://supportkind.org/wp-content/uploads/2020/11/Thwarted-Potential\\_-CAM-Report-FINAL-3.pdf](https://supportkind.org/wp-content/uploads/2020/11/Thwarted-Potential_-CAM-Report-FINAL-3.pdf)