



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

**“DHS Actions to Address Unaccompanied Minors at the
Southern Border”**

**Senate Committee on Homeland Security and Governmental
Affairs**

May 13, 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. Additionally, 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.

KIND’s work with thousands of unaccompanied children has highlighted the myriad challenges confronting children in search of protection and the enduring importance of policies and legal safeguards in the U.S. immigration system to ensure their well-being, best interests, and fair access to protection. Many unaccompanied children have fled grave threats to their lives and safety in their countries of origin, including severe violence, abuse, and human trafficking. The perils facing children have only increased in recent years as a result of the COVID-19 pandemic, devastating hurricanes in Central America, and policies blocking children and families from requesting protection in the U.S. or expelling them to the very dangers they fled. Additional obstacles abound following a child’s arrival in the U.S., where they must navigate complex immigration proceedings and fight their deportation in order to obtain humanitarian protection, often without the assistance of an attorney.

Recognizing the particular vulnerability of unaccompanied children in the immigration system, a bipartisan Congress enacted, through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), legal and procedural protections to ensure that unaccompanied children are treated fairly and humanely, that they are able to make their legal cases, and that no child is returned to harm. These safeguards, together with critical standards provided by the *Flores* Settlement Agreement and developed over decades, reflect our nation’s commitment to treating migrant and refugee children as children first and foremost. They remain of paramount and lifesaving importance today.

As the U.S. works to safely receive and care for unprecedented numbers of unaccompanied children that have arrived at the southern border in recent months it is clear that significant work remains to create a system that is truly reflective of and responsive to the needs and best interests of children. Implementing a model rooted in a fundamentally humanitarian and child protection approach--from a child’s first encounter at the border through the conclusion of his or her immigration case--will require creativity and ongoing collaboration by the Administration and Congress. These efforts must begin with building on, not eroding, fundamental protections in order to improve treatment and care of children in the U.S. immigration system while simultaneously supporting measures that ensure children will not be

forced to flee their countries to secure protection. For too long, policy approaches have turned our nation's back on children in search of safety in the name of deterrence and punishment. The current moment presents an opportunity to abandon these failed models and mark a new path—meeting children's need for care and protection with compassion and commitment.

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 and deploying the Federal Emergency Management Agency (FEMA) to support HHS in meeting intake and shelter needs.

We stand ready to work with DHS and Congress to support additional reforms to create a system that prioritizes and safeguards children's rights and well-being at all points. This statement highlights several priority areas: (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 TVPRA; (2) ensuring fair access to protection for children in proceedings, including through provision of legal counsel; and (3) the expansion of regional protection initiatives and efforts to address root causes of child migration.

Recent arrivals of unaccompanied children seeking protection at the U.S. southern border

During the past decade, increasing numbers of unaccompanied children have fled to the United States in search of safety and protection. In FY 2014, CBP encountered 59,692 unaccompanied children at the U.S. southern border.¹ By FY 2019,² arrivals marked a one-year record, with 72,875 unaccompanied children encountered. More recently, encounters of unaccompanied children began rising in April 2020, then continued into the current year.³ In March 2021, arrivals reached the highest total of any month, with 18,500 unaccompanied children encountered at the U.S. southern border.⁴ Although arrivals of unaccompanied children have begun to decline in recent weeks, unaccompanied children continue to seek protection at the U.S. southern border in significant numbers.⁵

The recent rise in unaccompanied children seeking protection in the U.S. reflects a number of intersecting factors, including an ongoing humanitarian crisis in the Central American countries of El Salvador, Guatemala, and Honduras. Widespread gang violence; sexual- and gender-based violence; corruption; poverty; natural disasters; and other dangers imperil the lives and safety of many children throughout the Northern Triangle of Central America, leaving many with no choice but to flee their countries to search for safety.⁶ The COVID-19 pandemic and the devastation caused by Hurricanes Iota and Eta have only exacerbated dangers in the region.⁷

In recent years, the Trump administration reduced aid to the region, rather than strengthening foreign

¹ See Congressional Research Service, "Unaccompanied Alien Children: An Overview;" (Oct. 9, 2019); <https://fas.org/sgp/crs/homesecc/R43599.pdf>.

² *Id.*

³ American Immigration Council, "Facts About the Current Situation at the Border" (Mar. 23, 2021); <https://www.americanimmigrationcouncil.org/news/facts-about-current-situation-border>.

⁴ Julia Ainsley "Record number of unaccompanied children crossed the border in March" *NBC News* (Apr. 2, 2021); <https://www.nbcnews.com/politics/immigration/record-number-unaccompanied-children-crossed-border-march-n1262901>.

⁵ Nick Miroff, "Border crossings leveling off but remain near 20-year high, preliminary April data shows" *Washington Post* (Apr. 23, 2021); https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112_story.html.

⁶ See Paula Dupraz-Dobias; "No easy solutions for tackling the Central American roots of the migration crisis" *The New Humanitarian* (Apr. 21, 2021); <https://www.thenewhumanitarian.org/analysis/2021/4/21/tackling-root-causes-of-migration-crisis-in-central-america>.

⁷ Nicole Narea, "Migrants are heading north because Central America never recovered from last year's hurricanes" *Vox* (Mar. 22, 2021); <https://www.vox.com/policy-and-politics/2021/3/22/22335816/border-crisis-migrant-hurricane-eta-iota>.

assistance to address the root causes forcing children from the region.⁸ It also weakened or terminated programs such as the Central American Minors Refugee/Parole (CAM) program,⁹ which enabled certain vulnerable children to seek protection while still in their countries of origin and to apply for refugee resettlement in the U.S. without having to undertake dangerous journeys.

Other Trump administration policies denied children and families the ability to request protection in the U.S. and forced them to remain in danger, contributing to bottlenecks at the border and an increase in unaccompanied children seeking protection this year. In March 2020, the Trump administration broadly suspended the entry of protection seekers, including unaccompanied children, into the United States through an order citing a rarely-used section of public health law.¹⁰ While the administration sought to characterize the “Title 42” policy as a necessary public health response to the COVID-19 pandemic, the policy has been broadly criticized by independent public health experts, who have underscored its lacking basis in public health and the U.S. government’s ability to uphold humanitarian laws and values while simultaneously protecting public health and safety.¹¹ Relying on this unlawful policy, the Trump administration expelled more than 15,000 unaccompanied children¹²—rapidly returning them to Mexico, Central America, and other countries—and to the very dangers they fled.

These expulsions violated the TVPRA by stripping children of vital legal safeguards and ultimately any meaningful opportunity to seek humanitarian relief.¹³ As a result, expelled children faced a heightened risk of human trafficking, persecution, and other grave harm—precisely the outcomes that the TVPRA was intended to prevent. By dispensing with screenings of children for trafficking and protection concerns, Title 42 meant that CBP failed to observe and respond to any evidence that children were trafficked into the United States for commercial sex or forced labor or would have faced return into trafficking situations.¹⁴ Moreover, by disregarding the legal definition of “unaccompanied alien child” provided for by Congress in the Homeland Security Act of 2002,¹⁵ the Trump Administration incentivized the rapid return of children to Mexico together with unscreened adults who could have posed a danger to them. In stark contrast to the TVPRA’s procedural protections, which require that unaccompanied children be transferred to the Office of Refugee Resettlement, where they can be assessed by attorneys and social workers specially trained to identify protection needs among this vulnerable population, children were instead returned to their countries of origin or Mexico without regard to the dangers they fled or might face. Far from deterring or disrupting human trafficking, Title 42 increased the risk that children would face exploitation and harm by unlawfully and callously disregarding anti-trafficking safeguards codified by Congress.¹⁶

Facing the same or worse dangers that initially compelled their flight to the United States in search of safety, many children expelled or turned back under Title 42 had no other option but to request

⁸ Lesley Wroughton, Patricia Zengerle, “As promised, Trump slashes aid to Central America over migrants,” *Reuters* (Jun. 17, 2019); <https://www.reuters.com/article/us-usa-immigration-trump/as-promised-trump-slashes-aid-to-central-america-over-migrants-idUSKCN1TI2C7>.

⁹ David Nakamura, “Trump administration ends Obama-era protection program for Central American minors” *Washington Post* (Aug. 16, 2017); https://www.washingtonpost.com/politics/trump-administration-ends-obama-era-protection-program-for-central-american-minors/2017/08/16/8101507e-82b6-11e7-ab27-1a21a8e006ab_story.html.

¹⁰ Centers for Disease Control and Prevention, 85 Fed. Reg. 17060 (March 20, 2020).

¹¹ Priscilla Alvarez, “Health experts slam Trump administration’s use of public health law to close border” *CNN* (May 18, 2021); <https://www.cnn.com/2020/05/18/politics/border-closure-public-health/index.html>.

¹² Camilo-Montoya-Galvez, Adam Verdugo, “Nearly 19,000 unaccompanied children entered U.S. border custody in March — an all-time high” *CBS News* (Apr. 2, 2021); <https://www.cbsnews.com/news/immigration-unaccompanied-children-border-custody-record-19k/>.

¹³ KIND Policy Brief, “Sending Children Back to Danger” (Oct. 8, 2020); <https://supportkind.org/wp-content/uploads/2020/10/Updated-Expulsions-at-US-MX-border-10.8.20.pdf>.

¹⁴ *Id.*

¹⁵ P.L. 107-296.

¹⁶ KIND Policy Brief, “Border Closure Exposing Children to Heightened Risk of Trafficking and Exploitation” (Apr. 28, 2020); <https://supportkind.org/wp-content/uploads/2020/05/UC-Expulsion-and-Trafficking-5.19.pdf>.

protection at the border once more when the Biden Administration exempted unaccompanied children from Title 42 in February 2021¹⁷ as part of efforts to restore compliance with federal law and standards pertaining to the treatment of unaccompanied children.

Challenges in CBP custody and the ORR shelter system

Although unaccompanied children have sought protection in the U.S. in significant numbers for more than a decade, and despite periods of marked increases in arrivals in 2014 and 2019, prior administrations have neglected to implement systemic changes to ensure the U.S.' ability to safely receive and care for children at the border and in the ORR system, including in times of influx. Recent challenges, from the prolonged detention of children in CBP custody in prior months to delays in the release of children from ORR custody, only underscore the need for critical reforms to the border and shelter systems to prioritize the welfare and safety of children at all points.

It is widely understood that children have distinct needs from adults owing to their developmental stage, age, and experience, yet the U.S. immigration system has long failed to prioritize and meet these critical needs. Prior administrations have maintained or poorly adapted border facilities and procedures designed for adults and rooted in a law enforcement approach and used these for children, rather than transforming systems to appropriately center child welfare and the needs and rights of protection seekers. These failures jeopardize the safety and wellbeing of children and others in search of protection and undermine, rather than uphold, U.S. law.

As one example, DHS tasks law enforcement agents and officers, rather than professionals trained in child welfare, with overseeing the care of children in CBP custody and performing protection screenings of unaccompanied children. It is important that personnel specially trained in child development and trauma-informed approaches rather than law enforcement interact with the children upon apprehension. Reliance on this staffing model diverts CBP personnel from functions for which they have received specialized training and also has led to persistent violations of TVPRA requirements, risking the return of children to harm or danger. In 2015, for example, the Government Accountability Office documented extensive noncompliance by CBP agents and officers with TVPRA screening protocols for unaccompanied children from Mexico.¹⁸ Despite these longstanding and systemic problems, DHS has failed to fulfill Congress's directive in FY 2021 appropriations report language¹⁹ to hire specially trained child welfare professionals at all southern land CBP facilities who would perform children's protection screenings and oversee their care.

The federal government has also declined to comprehensively adopt reforms such as permitting HHS professionals with child welfare expertise to co-locate in CBP facilities. Under this arrangement, HHS staff could accelerate the sponsor vetting process for unaccompanied children who arrive to the U.S. with trusted caregivers other than parents or legal guardians and also ensure appropriate initial placements for any children temporarily transferred to ORR's custody. Longstanding concerns also persist regarding substandard conditions for children in CBP facilities that risk harm to children's physical and psychological health and limit their access to counsel.²⁰

¹⁷ Camilo Montoya-Galvez, U.S. will not expel unaccompanied migrant children under Trump-era policy now being reviewed" CBS News (Feb. 3, 2021); <https://www.cbsnews.com/news/migrant-children-biden-administration-will-not-expel-trump-policy/>.

¹⁸ GAO, "Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody" (Jul. 14, 2015); <https://www.gao.gov/assets/680/671393.pdf>.

¹⁹ H.R. Report 116-458.

²⁰ See, e.g., University of Chicago Law School - Global Human Rights Clinic, et al, "Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection" (May 2018); <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihr>.

Prior administrations also have failed to undertake essential reforms to ORR custody of children. ORR has long relied on large-scale congregate care settings unsuitable for vulnerable children, without sufficiently expanding capacity in smaller-scale shelters and family-based care settings better aligned with children's best interests and domestic child welfare laws, such as the bipartisan Families First Prevention Services Act of 2018.²¹ Some of these facilities have failed to maintain proper conditions, and problems have included the incidence of sexual abuse of children by facility staff, inadequate and/or misguided mental health treatment, and a lack of suitable accommodations for particularly vulnerable children. The consequences of these systemic weaknesses were magnified by Trump Administration policies that prolonged children's time in government custody, such as a 2018 information-sharing agreement with DHS²² that discouraged potential sponsors from coming forward and significantly delayed children's release to loving caregivers.

Owing to these challenges, DHS and ORR were poorly positioned to safely receive and care for rising numbers of unaccompanied children arriving at the U.S. southern border in recent months. On March 28, CBP held 5,767 unaccompanied children in its custody.²³ Despite the TVPRA's requirement that DHS transfer unaccompanied children into ORR custody within 72 hours, many of these children languished in CBP detention facilities for well over 100 hours.²⁴ CBP law enforcement personnel, rather than child welfare professionals trained in children's unique needs and challenges, directed their care and conducted their protection screenings. In recent weeks, DHS has worked diligently to promptly transfer children to ORR custody and to significantly reduce children's time in CBP facilities,²⁵ yet reforms nevertheless remain critical.

Children in ORR custody have also faced substantial challenges, as has ORR itself. ORR's network of licensed children's shelters has operated at limited capacity due in part to pandemic-related occupancy restrictions on many congregate care facilities to prevent the spread of coronavirus.²⁶ This reduced capacity has been further strained by increases in the arrival of unaccompanied children seeking protection at the border. In response, ORR activated an "influx facility" in Carrizo Springs, Texas.²⁷ ORR's online Policy Guide defines an influx facility as "a type of care provider facility that opens temporarily to provide emergency shelter and services for UAC during an influx or emergency" and sets forth standards governing such facilities' operations.²⁸ Due partly to challenges in rapidly standing up new infrastructure, ORR has since established a number of emergency intake sites (EISs) where it is temporarily housing unaccompanied children.²⁹ The Policy Guide does not define EISs, distinguish them from influx facilities, or identify minimum standards or other policies associated with these sites. However, a May 5, 2021 Department of Health and Human Services (HHS) Fact Sheet delineates

²¹ Enacted as part of Public Law (P.L.) 115-123.

²² KIND, A Timeline: How the Trump Administration is Rolling Back Protections for Children (Jul. 2020); https://supportkind.org/wp-content/uploads/2020/07/A-Timeline_-Updated-July-2020-1.pdf.

²³ Priscilla Alvarez, "Number of unaccompanied migrant children in Customs and Border Protection custody falls 45%" *CNN* (Apr. 12, 2021); <https://www.cnn.com/2021/04/12/politics/border-migrant-children/index.html>.

²⁴ *Id.*

²⁵ *See, e.g.*, Geneva Sands, Average time for unaccompanied children in CBP custody down more than 75 percent, *CNN* (May 6, 2021), <https://www.cnn.com/2021/05/06/politics/unaccompanied-migrant-children-border-patrol-custody-wait-time/index.html>; Priscilla Alvarez, Number of children held in Border Patrol facilities drops 84% since peak last month, *CNN* (Apr. 30, 2021), <https://www.cnn.com/2021/04/29/politics/border-patrol-unaccompanied-minors/index.html>.

²⁶ Priscilla Alvarez, "Biden administration tells facilities for migrant children to reopen to pre-pandemic levels" (Mar. 5, 2021); <https://www.cnn.com/2021/03/05/politics/immigration-border-crowding-covid/index.html>.

²⁷ Department of Health and Human Services, "Carrizo Springs Influx Care Facility" (Apr. 12, 2021); <https://www.hhs.gov/programs/social-services/unaccompanied-children/carrizo-springs-temporary-influx-facility-update.html>.

²⁸ ORR, Children Entering the United States Unaccompanied: Section 7;" <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7#7.2>.

²⁹ Joel Rose, "Fewer Migrant Children Held In Border Detention Facilities, But Challenges Remain" (Apr. 15, 2021); *NPR*; <https://www.npr.org/2021/04/15/987615232/fewer-migrant-children-held-in-border-detention-facilities-but-challenges-remain>.

program responsibilities relating to EISs, and states that these sites “must provide basic standards of care to ensure the child’s physical safety, access to legal services information, and access to emergency clinical services” and acknowledges that, “[d]ue to their emergency nature, EIS may not be able to provide a full range of services to UC but are encouraged to offer case management services, educational services, and recreational time for UC as practicable.”³⁰

As the administration works to expedite children’s release from emergency and licensed facilities while ensuring child safety, it will become even more critical that ORR provides children with post-release services, including legal representation and social services, to ensure due process, children’s awareness of immigration court processes and responsibilities, and the safety and well-being of children in their sponsorship settings.

Recommendations

I. Humanitarian Reception of Children at the Border

A. Ensure Processing Consistent with the TVPRA and Terminate the Title 42 Policy

In recent months, the unique needs of unaccompanied children have assumed stark focus as thousands of 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 policies under the Trump Administration.

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. Additionally, 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 urge the Administration to immediately terminate the Title 42 policy in its entirety and recommend that DHS 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.

B. Hire Child Welfare Professionals

Children arriving to the U.S. are held during initial processing in CBP facilities wholly unsuited to their

³⁰ HHS, “Fact Sheet: Unaccompanied Children (UC) Program” (May 5, 2021); <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

needs and appropriate care and which are staffed by CBP officers trained in law enforcement, rather than in the development, welfare, and care of children. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improving care of children in government custody by hiring licensed child welfare professionals to oversee the care and screening of children in all CBP facilities along the border. These professionals, who should be licensed in social work and have requisite training and experience in children's needs and development, can not only make sure that children's basic needs are provided for, but can also conduct screenings for protection needs as required by the TVPRA. By assuming responsibility for child care functions currently being performed by CBP officers, child welfare professionals can not only improve conditions for children but ensure that CBP officers are able to dedicate their time to the law enforcement functions for which they have received specialized training.

Congress directed DHS to hire child welfare professionals at all points along the southern border as part of both FY2020 and FY2021 appropriations legislation.³¹ Yet DHS has failed to implement this vital safeguard, sidelining both the wellbeing of children and congressional intent to improve conditions for them at the southern border. Noncompliance with this directive directly undermines DHS' ability to safely process children in CBP custody and must be immediately remedied through the hiring and placement of appropriate child welfare staff.

C. Facilitate Co-Location of HHS professionals in CBP Facilities

Among the high numbers of unaccompanied children arriving at the border are many children who traveled to the U.S. with family members or caregivers such as aunt/uncles, grandparents, or adult siblings who are not their parents or legal guardians. These children meet the legal definition of an "unaccompanied alien child," as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008.³² Accordingly, they must be afforded all the procedural protections accompanying this status through the conclusion of their immigration proceedings. At the same time, however, DHS and ORR can ensure that children do not face prolonged custody in CBP or ORR facilities or unnecessary separation from loving caregivers by immediately commencing the family reunification process in CBP custody. Through the placement of HHS federal field specialists in CBP facilities, ORR could consider caregivers traveling with a child as potential sponsors and facilitate the simultaneous release of the child and caregiver together. HHS staff can also rapidly identify children with known vulnerabilities or special needs and ensure their initial placement in facilities best suited for their needs and similarly ensure that the process of identifying potential sponsors for all unaccompanied children begins as soon as possible.

DHS recently undertook a pilot project to co-locate HHS professionals in CBP facilities. These efforts appear, however, to have been limited to a small scale and very limited responsibilities and were discontinued after a short time without a plan for expanding or implementing the practice more broadly. We strongly urge DHS to expeditiously address any roadblocks to the co-location of HHS professionals in CBP facilities and to facilitate implementation of this practice along the border.

D. Undertake Broader Reforms to Create a Humanitarian Reception Model

Transforming the current reception system, which is rooted in a law enforcement approach, to one that puts at its core the best interests and welfare of children will require long-term commitment and vision from the whole of government. Through engagement of a nongovernmental humanitarian actor DHS

³¹ H.R. Report 116-180; H.R. Report 116-458.

³² P.L. 107-296; William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (TVPRA).

and HHS can help ensure the appropriate reception, screening, and care of children who arrive to the United States at or between ports of entry. DHS' recent deployment of the Red Cross to assist with the immediate needs of DHS and HHS is an important first step. Efforts to formalize a humanitarian reception model over the long-term should continue beyond the current response and involve outreach to and engagement with nongovernmental humanitarian organizations.

A critical component of these efforts should include coordination across agencies to modify 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. The emphasis at all times must be on ensuring the welfare, best interests, and rights of children, minimizing detention, and ensuring the safe and swift reunification of children with sponsors.

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 critical protections and prevented unaccompanied children from fairly accessing legal relief for which they are eligible, risking the return of children to harm and undermining 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 for 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.

A. Ensure TVPRA Protections Are Upheld Throughout Proceedings

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.

B. Support Legal Representation for Unaccompanied Children

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 before the Executive Office for Immigration Review (EOIR) or interviews before USCIS. Despite their unique vulnerability in the immigration system and legal provisions in the TVPRA providing for their access to counsel, more than half of unaccompanied children lack an attorney to assist them in navigating immigration proceedings with the highest of stakes for their lives and safety.³³ Government data illustrate the critical difference legal representation can make in a child's immigration case. From FY18 through the first half of FY19, unaccompanied children represented by counsel were 70 times more likely than unrepresented unaccompanied children to obtain legal relief.³⁴

ORR currently provides financial support to a network of nonprofit legal services providers to support legal representation for unaccompanied children but need far exceeds current funding and capacity. Amid high numbers of unaccompanied children arriving to the U.S., this due process crisis will only expand without sufficient support to ensure that no child faces immigration court alone. To ensure the provision of legal orientations, screenings, and legal assistance to the greatest number of children possible, KIND recommends that additional funding be appropriated for post-release legal services as part of FY22 Labor, Health, and Human Services appropriations legislation. We similarly urge DHS' support of post-release social services, which can assist children as they navigate transitions and heal from trauma, and, like legal services, also provide an extra set of eyes to help ensure a child's safety following release to a sponsor.

KIND also strongly supports legislative proposals that would provide for government-appointed counsel for all unaccompanied children and dramatically improve the fairness of the current system.

III. 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.

We are encouraged by DHS' restarting of the Central American Minors (CAM) program, which was first created in 2014 but was terminated by the Trump Administration in 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

³³ KIND Fact Sheet, <https://supportkind.org/wp-content/uploads/2019/12/KIND-Fact-Sheet-January-2020.pdf>.

³⁴ KIND calculated this figure based on Executive Office for Immigration Refugee (EOIR) data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview," p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homsec/R43599.pdf>.

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.³⁵ 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 months, DHS has worked tirelessly to receive unprecedented numbers of unaccompanied children and to restore access to fundamental humanitarian protections denied to children by the Trump Administration's policies. We are encouraged by the agency's commitment to the fair and humane treatment of children arriving to the U.S. and to compliance with critical protections for them, including those in the TVPRA. Critical work remains, however, to ensure that the best interests and welfare of children are prioritized throughout the immigration system—from children's 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 look forward to working with DHS, Congress, and the whole of government to ensure that all unaccompanied children are treated as children first and foremost and have fair access to the protection they need and deserve.

³⁵ 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