



**Statement for the Record by Kids in Need of Defense (KIND)
“Oversight of the Department of Homeland Security”
Senate Committee on the Judiciary
November 16, 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 57,000 attendees in pro bono representation of these children, and formed pro bono partnerships with over 700 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 is uniquely positioned to understand the dangers that migrant children face—dangers in their countries of origin, including severe violence, abuse, and human trafficking; dangers on their journey to the United States, including threats from criminal elements; and barriers to protection in the United States, including closed ports of entry, inappropriate conditions of confinement, and lack of legal representation. Both Congress and the Department of Homeland Security (DHS) play crucial roles in shifting our country 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. This humanitarian approach will ensure that children arriving in the United States without a parent or guardian have safe access to the border, are afforded proper protection screenings, and receive appropriate treatment while in U.S. custody. Further, a well-functioning immigration system must ensure due process and provide access to life-saving humanitarian protection for those who need it most.

In order to meet its legal responsibilities under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and other relevant laws and standards and to move toward a humanitarian system for unaccompanied children, DHS and the Administration as a whole should work to:

1. Reopen ports of entry to protection seekers and end the use of Title 42 and the Migrant Protection Protocols.
2. Accelerate regional protections for families and children fleeing danger.

3. Ensure humane treatment and appropriate conditions at the border and in Customs and Border Protection (CBP) custody, including hiring licensed child welfare professionals at all CBP facilities.
4. Support access to counsel for unaccompanied children.

Reopen ports of entry for all migrants and end policies that make it difficult for children to seek safety.

- Ensure that ports of entry are open for unaccompanied children and others seeking protection in the United States.
- Terminate the Title 42 policy in its entirety.
- Avoid restarting MPP and use every tool available to end the program completely.

Port closures create conditions that require child migrants to make a more dangerous journey. Because they cannot access regular ports of entry, many children are compelled to find dangerous ways to enter the United States between ports—a situation that places children in needless harm and stands in the way of orderly processing at the border. We recommend that DHS allow those seeking protection to present themselves at ports of entry. Short of full reopening, DHS should 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.

The Biden Administration has largely kept in place the use of Title 42 to expel migrants at the border without offering them the opportunity to request asylum or other humanitarian protections. The Administration has exempted unaccompanied children who arrive between official entry points from Title 42, which further incentivizes children to make dangerous journeys between ports and frustrates the Administration’s ability to create an orderly and humane system at the border. Additionally, many other children who flee harm together with their families, as well as single adult asylum seekers, remain shut out of avenues to safety. Independent public health experts have long made clear that the Title 42 policy has never been guided by a legitimate public health rationale. The Administration must end the policy and utilize the numerous other ways to implement COVID safety measures without denying migrants access to legally required protections.

We are heartened by DHS’s renewed effort to terminate the Migrant Protection Protocols (MPP), or “Remain in Mexico” policy, but DHS must move with more urgency to end the program entirely. Under MPP, asylum seekers, including families with young children, were returned to dangerous border cities in Mexico and left vulnerable to criminal groups and human traffickers as they waited to make their case in the United States. While unaccompanied children are technically exempt from MPP, the policy has resulted in many documented cases of family separation that left children traumatized and with reduced legal protections. Moreover, some

unaccompanied children were directly subject to MPP, contrary to the program's guidelines.¹ Although the courts have created barriers to terminating MPP, there is much more the Administration can do to quickly end the program. It is absolutely essential for legal and moral reasons that DHS not restart MPP, even on an interim basis.

Expand the scale and eligibility of the Central American Minors program.

- Provide alternatives to dangerous migration journeys for Central American children.

As part of the solution to protecting children from dangerous migration journeys, DHS should ramp up and further expand the newly relaunched Central American Minors (CAM) program. CAM allows certain children in El Salvador, Guatemala, and Honduras the opportunity to reunite with a parent or legal guardian lawfully present in the United States through application for refugee resettlement while "in country," without having to undertake dangerous journeys to the United States alone. Before it was terminated in 2017, the program helped 3,000 children arrive safely and reunite with their parents in the United States.

We applaud the Biden Administration's work to restart the program and expand eligibility as part of a comprehensive strategy to address migration. But to provide a meaningful alternative to dangerous migration journeys, the Administration must accelerate implementation, increase outreach, and provide counsel and assistance to children and families eligible for the program. We encourage Congress and DHS to further expand the program and its criteria to new applicants to make this pathway available to additional children as soon as possible.

Ensure that children are treated appropriately at ports of entry and in CBP custody.

- DHS should improve conditions for unaccompanied children at the border and in CBP custody.
- DHS should move immediately to hire child welfare professionals at all CBP 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, but more must be done to improve conditions for unaccompanied children at the border. In the first months of 2021, thousands of unaccompanied children were 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.² DHS has made commendable progress in reducing the average time a child spends in CBP custody, but unaccompanied children are still held in CBP hold rooms and facilities

¹ Hamed Aleaziz, *A Leaked US Government Report Documents How People With Medical Conditions And Disabilities Were Forced Into The "Remain In Mexico" Program* (Oct. 21, 2021), BuzzFeed News, <https://www.buzzfeednews.com/article/hamedaleaziz/leaked-report-remain-in-mexico-children>.

² 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/>.

originally designed for adults and for only short-term use. DHS must continue to improve 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.

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 all CBP facilities. 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. For two years, Congress has recognized this need and directed DHS to hire or obtain the services of "child welfare professionals with culturally competent, trauma-centered, and developmentally appropriate interviewing skills to provide child welfare expertise and screening services on a full-time basis at each land [port of entry] or Border Patrol station along the southern land border."³ The Senate's FY2022 Homeland Security appropriations explanatory statement proposes an additional \$14.5 million to DHS for this purpose.⁴ We have been discouraged that DHS has not made significant progress in implementing the directive to bring on these professionals, and we hope that Congress, through its oversight and appropriations roles, can push the agency to take action.

We are encouraged that DHS has piloted a collaboration with the Department of Health and Human Services (HHS) to co-locate HHS professionals in CBP facilities to expedite appropriate placement of children in Office of Refugee Resettlement (ORR) facilities. When HHS staff are present at CPB reception centers, they can help to eliminate delays in reunifying unaccompanied children with sponsors and to ensure sufficient bedspace to house newly arriving unaccompanied children. DHS should expand this collaboration to make ORR staff present at all reception centers.

The world recently saw the stark reality of inhumane treatment at the border through images of Border Patrol agents employing horse reins as whips against terrified Haitian migrants seeking refuge in Del Rio, Texas. DHS's mass expulsion of Haitians, including families and children, even as Haiti stresses its incapacity to safely receive them reflects a disordered border policy. DHS should cease all expulsions and deportations of Haitian migrants while ensuring that every Haitian migrant receives a full and fair opportunity to seek humanitarian protection. KIND stands ready to work with Congress and DHS to build a strong, humane, and orderly immigration system that respects the dignity of all migrants, especially the most vulnerable.

Support due process and access to legal representation for all unaccompanied children.

- Congress and the Administration should work to ensure that all unaccompanied children in immigration proceedings have attorneys.

³ H. Rep. 116-180, at 20 (2019); H. Rep. 116-458, at 23 (2020).

⁴ Draft Explanatory Statement for the Homeland Security Appropriations Bill 2022, at 27, 32, 119-20, available at https://www.appropriations.senate.gov/imo/media/doc/DHSRept_FINAL.PDF.

- DHS policies should prioritize the best interests of the child and ensure that TVPRA protections are upheld throughout proceedings.

In addition to its role in receiving children arriving to the United States, 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. 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. To this end, DHS should 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.

Congress can further support access to legal representation by passing legislation such as the Fair Day in Court for Kids Act⁵ and appropriating additional funds to ORR for counsel for unaccompanied children. Despite their unique vulnerability in the immigration system and legal provisions in the TVPRA requiring ORR to provide these children with counsel to the “maximum extent practicable,” 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. Government data illustrate the critical difference legal representation can make in a child’s immigration case. From October 1, 2017, through March 31, 2021, unaccompanied children represented by counsel were 97 times more likely to be granted relief than those without an attorney.⁶

DHS should 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. We also 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.

Conclusion

DHS faces critical challenges in charting a new path that centers the needs and best interests of children throughout the immigration system. Ensuring the fair and humane treatment of all who arrive to the United States 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.

⁵ Fair Day in Court for Kids Act of 2021, S. 3108, 117th Cong. (2021).

⁶ Congressional Research Service, *Unaccompanied Alien Children: An Overview*, at 17 (September 1, 2021).