



**Statement for the Record by Kids in Need of Defense (KIND)  
“Living Up to America’s Promise: The Need to Bolster the U.S.  
Refugee Admissions Program”**

**U.S. Senate Committee on the Judiciary  
Subcommittee on Immigration, Citizenship, and Border Safety**

**March 22, 2023**

KIND is an international organization headquartered in Washington, D.C., with programming in the United States, Mexico, Central America, and Europe. With 16 offices in the United States, KIND plays a pivotal role in the representation of unaccompanied immigrant children throughout the immigration process. KIND’s core program focus is the delivery of legal and social services, which includes legal representation of children through our vast private sector pro bono network and in-house legal team, legal training, technical assistance, impact litigation, and work to reunify families, as well as psychosocial support to address the trauma often experienced by children who have been forcibly displaced; and policy and advocacy to promote laws and policies that protect unaccompanied immigrant children. KIND works with children at every stage of their migration journey—as they depart from or return to high-migration communities, as they migrate through transit countries, and in the U.S. as they seek legal protection. Our programmatic work with children directly informs our policy work and provides us with a unique vantage point from which to consider holistically the needs of these children.

In recent years, more than 89 million people worldwide have been forcibly displaced, nearly 41 percent of them children.<sup>1</sup> A combination of factors, such as war, violence, political instability, economic insecurity, and natural disasters, has forced millions of children to flee their countries, as threats to their lives and wellbeing make even routine activities such as going to school perilous and impede their ability to grow in safety. Many children may migrate alone or become separated from parents or other family members during their journey. These children often confront particular dangers on account of their age and developmental stage, and frequently are targeted for violence, trafficking, exploitation, and other harms.

This crisis of displaced persons, including millions of refugees, requires the United States to redouble its resettlement efforts. In the first months of the Biden administration, the president acknowledged this need, and pledged under a series of executive orders to rebuild and restore the U.S. Refugee Admissions Program and to open additional pathways for refugee resettlement.<sup>2</sup> KIND was particularly gratified that the administration included the resumption of the Central American Minors (CAM) program, an opportunity for in-country refugee processing for certain children, which began in 2014 and was terminated in 2017, as a component of its plan for welcoming refugees. KIND is currently screening and assisting parents who wish to file under the re-designed CAM program, which opened to new applicants on June 15, 2021.<sup>3</sup>

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<sup>1</sup> UNHCR, Figures At a Glance, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

<sup>2</sup> Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, E.O 14040, February 2, 2021 ; Rebuilding and Enhancing Refugee Resettlement and Planning for the Impact of Climate Change on Migration, E.O 14013, February 4, 2021 Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation, E.O. 13988, January 20, 2021

<sup>3</sup> <https://www.state.gov/refugee-admissions/central-american-minors-cam-program/>

CAM is a critical tool for ensuring the protection of child migrants from Central America. It could also serve as a laboratory for promoting innovative practices and expanded access to refugee protection across the region and around the world. For this promise to unfold, however, the CAM program requires further resources and policy changes, such as ensuring that children have access to counsel, equipping adjudicators with the most up-to-date factual and legal analysis available, and ensuring the safety of children during the adjudication process. Saving children from taking a perilous journey to the southwestern border of the United States is in everyone's interest but it requires greater attention and support from Congress and the administration.

## **CAM background**

As a response to the unprecedented increase in the arrival of unaccompanied children at the border in 2014, the Obama administration announced the creation of a unique refugee processing program designed to create a legal pathway for children to enter the United States and reunite with parents. The program permitted parents residing lawfully in the United States to petition for their children to receive a refugee interview in their home country. If a child met the definition of refugee, they would be processed accordingly, but if an adjudicator determined that the child did not qualify and yet was in danger, the adjudicator could recommend the child for parole into the United States. This dual track approach was designed to decrease the number of children traveling alone to the border and was consistent with other "in-country" refugee processing programs run by the United States in situations where individuals clearly faced persecution but had no means of easily leaving their home country to seek refugee status.

From December 2014 to November 2017, when it was terminated by the Trump Administration, the CAM program received approximately 13,000 applications from parents residing in the United States. In total, 1,627 children were admitted through the program as refugees; while another 1,465 children had been paroled into the United States. Another 2,714 conditional parole approvals were rescinded following termination of the parole portion of the program in August 2017 and thousands more children and parents had applications pending at the time the Trump Administration fully terminated CAM.<sup>4</sup> On March 1, 2019, a federal court ordered the Trump Administration to resume processing the revoked cases, resulting in the arrival of approximately 1613 additional parolees by the end of December 2022.<sup>5</sup> In addition, between April 2021 and June 2022, another 130 children were admitted as refugees through the CAM program.<sup>6</sup>

Thus, CAM serves as a vital lifeline for at-risk children, but for it to fully live up to its potential, additional support and resources must be provided, particularly to support the many steps of the process that parents and children must go through after applying. In addition, many children paroled into the United States through CAM may have had viable refugee claims but did not have the opportunity to fully explore them. Given our experience with the types of claims frequently raised by Central American children, such as claims relating to domestic violence, sexual and gender based violence, persecution by gang members in control of discrete areas of a city or town, political opinion, and persecution based on family group claims, we believe that far more children could qualify as refugees if the appropriate mechanisms were in place to more easily assess their claims.

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<sup>4</sup> Kids in Need of Defense, *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*, November 2020, <https://supportkind.org/resources/thwarted-potential/>

<sup>5</sup> Rachel Schmidtke and Yael Schacher, *Mixed Blessing: Guatemalan Experiences Under the New Central American Minors Program*, March 15, 2023, <https://www.refugeesinternational.org/reports/2023/3/14/mixed-blessing-guatemalan-experiences-under-the-new-central-american-minors-programnbsp>

<sup>6</sup> Id.

## **Recommendations for Ensuring Refugee Claims are Properly Identified**

KIND has written extensively about recommended improvements to the CAM program. We highlight here some of our key recommendations for maximizing CAM's viability as a vehicle for strengthening and expanding the success of the U.S. refugee resettlement goals.

### **Ensuring that children are permitted access to counsel during interviews**

In KIND's experience, the most critical factor in maximizing a finding that a child qualifies as a refugee is the provision of counsel. In fact, Executive Order 14013 specifically directed government agencies to explore access to counsel during refugee interviews<sup>7</sup>, a practice that would be particularly helpful during CAM adjudications. Children's age, development, and ability to trust strangers may all contribute to difficulties during the interview process; an attorney by their side, who has helped them understand and prepare for the interview, can foster confidence, clarify issues, or help to elicit answers when the child does not understand the adjudicator's questions. This may be particularly critical for children in the CAM program who are separated from their parents and therefore do not have that additional support available to them. KIND encountered many children during the initial CAM program with meritorious claims who simply could not articulate their experiences or make the necessary legal connections during the interview. For example, pro bono counsel in one case was able to elicit information about domestic abuse that the children had initially been afraid to disclose, leading to their approval for refugee status and subsequent travel to the United States. In other cases, where KIND learned about a child's case after a denial, KIND was able to provide legal assistance on requests for review, securing reversal of several decisions.

Similarly, KIND assisted a Honduran youth whose initial refugee claim was denied because he did not understand that the violence he suffered because of his sexual orientation could establish eligibility for refugee status, and the USCIS interviewing officer failed to elicit information from him regarding sexual orientation. KIND helped him submit a request for reconsideration based on sexual orientation and he was granted refugee status.

As these examples show, legal assistance makes a critical difference in refugee claims, particularly in a new program such as CAM in which the traditional framework for accessing USRAP (US Refugee Admissions Program) is inverted. While the traditional refugee processing program involves tightly controlled and coordinated referrals and pre-identified categories of refugee candidates, CAM relies on self-referrals through a parent or other family member and appears to have fewer presumptions of eligibility built into its adjudicative standards. As noted above, we recommend revisiting these issues, but marrying facts to legal standards will always be easier for adjudicators when counsel participates in the process.

Permitting counsel to be present during CAM interviews would be a straightforward mechanism for improving adjudications, increasing efficiencies, and ensuring that meritorious refugee claims are recognized.

### **Reinforcing existing factual and legal frameworks upon which refugee determinations are based**

Following World War II, countries around the world committed to ensuring that people fleeing persecution and other threats to their lives and safety would never be returned to harm. International law similarly recognizes the particular vulnerability of children and articulates special concern for their rights and protection. These fundamental principles, which are reflected in the United States' values and laws, have only grown in importance as the U.S., like other nations, works to establish safe, orderly and humane border processes, improve the asylum

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<sup>7</sup> E.O 14013, Sec. 4(g)(iii).

system's responsiveness, and respond to the overwhelming numbers of refugees fleeing persecution around the world.

And while the basic contours of refugee protection remain the same, society's understanding of persecution and who may be subject to persecution is constantly evolving, requiring adjudicators to have access to the most accurate information possible as well as the opportunity to explore all relevant legal interpretations in a given case. KIND endorses the Biden administration's charge to executive branch agencies to improve the quantity and quality of training, to develop case profiles and other materials which reflect common fact patterns and legal arguments, and to welcome the assistance of counsel in identifying and refining legal conclusions.

We particularly endorse the directive in Executive Order 14013 for DHS to create more detailed analysis of country conditions to assist adjudicators in analyzing the very specific factual issues arising in many Central American protection cases.<sup>8</sup> By its nature, adjudicating refugee and asylum claims is difficult. The fact-intensive, highly traumatic, and deeply personal narratives involved in establishing eligibility for protection can be draining and daunting for adjudicators and applicants alike. Children, in particular, may be unable to provide the necessary context and understanding of country conditions required to accurately locate their personal suffering within a broader legal framework. This places a heavy burden on the adjudicator to fill in the gaps and make the connections to broader patterns of persecution and harm.

Although CAM adjudicators receive country conditions training prior to their deployment, KIND staff and other NGOs have observed results reflecting an uneven knowledge of country conditions, as well as a reluctance to apply legally sound but potentially novel conclusions to children's claims. Expanded training from recognized experts on country conditions from within the NGO community would support a deeper understanding of the issues, but decision analysis is also required. Thorough, detailed country conditions analysis in which adjudicators receive guidance on the application of particular fact patterns to legal standards of eligibility offers a solution to this concern. We understand that the use of uniform country conditions analysis has been beneficial in the processing of Afghan asylum claims and has likely resulted in both higher grant rates and greater consistency across offices. Given the issues and the demographics of the CAM program, in-depth analysis would provide important guidance to an adjudicator, simplify the process for children, and ensure that we are maximizing CAM's potential to identify refugee populations.

Making use of such tools would also provide more focused opportunities to ensure that applications of legal standards to facts were consistent with international norms, creating ongoing opportunities to analyze and adapt to rapidly changing country conditions and legal developments. With respect to children's claims, country conditions briefs could also reflect the unique dangers children face, the impact on their development, and the way their articulation of facts may vary from expected or common recitations of harm and persecution. With the expected release of a particular social group rule, the opportunities for further engaging in particular social group analysis through these briefs are also likely to expand.

### **Expanding access to particularly vulnerable groups such as women, children, and LGBTQ individuals**

Throughout the executive orders addressing refugee protection, there is an important emphasis on expansion of avenues for protecting the most vulnerable.<sup>9</sup> To most faithfully implement this directive requires a robust refugee program with multiple avenues for identifying those in need of protection and multiple pathways for accessing the system.<sup>10</sup> CAM represents an important innovation, but its potential is still under-utilized. Driving more

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<sup>8</sup> Id. at Sec.4(g)(i).

<sup>9</sup> See Sec. 1 Policy, E.O. 14103.

<sup>10</sup> Id. at Sec. 1(g) "My Administration shall seek opportunities to enhance access to the refugee program for people who are more

potential child migrants to use CAM rather than risk the dangerous journey north on their own requires expanding not only the pool of parents eligible to petition, but also increasing the opportunities for children in distress to participate in the program.

KIND has previously provided a series of recommendations<sup>11</sup> designed to expand children's eligibility criteria, including:

- permitting children residing outside Central America to access the program,
- allowing UNHCR and other NGOs to provide on-the-ground referrals of children at risk, regardless of their parent's legal status in the U.S.;
- assisting orphaned or abandoned children in accessing the program who do not have a tie to the United States;
- using technology and other streamlining mechanisms to create more accessible interviews; and
- providing emergency relocations and protection to children at imminent risk as quickly as possible.

These recommendations are either reflected in or consistent with the spirit of the executive orders, enhance child protection, and make it far more likely that child refugees will be recognized and admitted to the United States.

### **Ensuring that legal standards on issues such as domestic and gang violence are consistent with international norms**

Executive Order 1440 directs agencies to align current adjudication criteria so that decisions are consistent with international norms, which notably are more generous in their analysis of nexus and other critical legal standards when assessing issues such as gang and domestic violence claims.<sup>12</sup> Children interviewed through the CAM program are frequently at risk of persecution based on domestic violence, gang violence and territorial control, sexual and gender-based violence, or their status as children within some particular social group. Uneven application of domestic legal standards, including failure to consider long-standing international recommendations on particular social group and newly emerging persecution claims contributed to a lower-than-expected refugee grant rate during the initial CAM program. Based on KIND's experience working with children in the northern Central American countries and in the United States, we are convinced that the more expansive application of legal standards endorsed within the E.O would lead to an increase in refugee admissions through the program.

For example, many of the claims involved a fear of persecution based on membership in a particular social group, persecution by gang members, and gender-based violence, all of which have been repeatedly recognized as bases for refugee protection but are nonetheless often treated as complex and confusing. Certainly, without assistance of counsel or clear guidelines on eligible categories, eliciting the facts necessary to establish such claims may be difficult, but the legal analysis has progressed to a level of sophistication that can quickly encompass the dangers faced by children in Central America. For example, the UNHCR has offered legal opinions and recommendations supporting a finding that opposition to gangs, which in many areas of northern Central American countries serve as a de facto government, could be a form of political opinion, since at least 2016, but the government has failed to fully embrace this analysis. Similarly, children have been repeatedly recognized as a social group by the UNHCR and other countries. The constant politicization of particular social group analysis—from the long-

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vulnerable to persecution, including women, children, and other individuals who are at risk of persecution related to their gender, gender expression, or sexual orientation.”

<sup>12</sup> E.O 14040, Sec. 4(c)(i).

delayed promulgation of a coherent PSG rule to the fearmongering caused by “floodgate” arguments against recognizing persecution towards children by non-government actors further contributed to an atmosphere in which parole was the “safer” option in CAM cases. Because refugee processing within Central America was a new initiative, general lack of familiarity among refugee officers about country conditions and the nature of refugee claims may have also contributed to the depressed grant rate.

The directives within the executive orders, coupled with the anticipated release of the particular social group rule, offers a fresh start for recognizing the refugee status of many Central American children.

## **Retaining Existing Refugee Protections for Asylum Seekers**

Inconsistent policies also threaten to undermine the success of the CAM program. The most glaring example of such inconsistencies is evident in the recently proposed rule imposing new conditions on eligibility for asylum. If adopted, the rule would create a rebuttable presumption of ineligibility for asylum if an applicant failed to make use of an authorized parole program, registered for an appointment to present at a U.S. port of entry using the CBP One application, or could demonstrate that they had applied for and been denied asylum in another country in which they passed on the way to the United States. Unaccompanied children are exempted from ineligibility and applicants may raise other evidence that they could not comply with the conditions, but this is not enough to legitimate the proposal. The rule itself would essentially condition asylum on whether an individual or family had been granted permission to apply for asylum, contrary to both domestic and international law and treaty obligations. While we understand the desire to incentivize the use of parole programs to decrease irregular migration, this cannot be done at the expense of the legitimate right to seek asylum in the United States regardless of immigration status.

The far better course of action is to make CAM a truly viable refugee program, giving parents and children the necessary assurances that cases will be considered fairly and efficiently. This in turn can create opportunities for other in-country based refugee processing and reduce potential pressure at the southern border through positive and proactive programs.

## **Conclusion**

All signs indicate that the refugee program is poised for growth, and that USCIS is increasing its capacity to process more refugees, including those from within the CAM programs. KIND welcomes these improvements but urges Congress and the administration to do more to support innovative programs such as CAM.

CAM presents an opportunity to showcase the possibilities of a refugee program that is more robust, more creative, and nimbler in its response to both emerging crises and systemic oppression and persecution. Executive orders issued in 2021 include numerous directives that could be successfully applied in the CAM process, allowing CAM to serve as a touchstone for the administration’s broader vision of refugee resettlement. This will only happen, however, if the CAM program is prioritized as a vehicle for increasing refugee admissions from Central America and recommendations to increase its efficiency and inclusiveness are adopted.