



**Statement for the Record by Kids in Need of Defense (KIND)  
“Ensuring the Safety and Well-Being of Unaccompanied Children”**

**U.S. Senate Committee on the Judiciary**

**June 14, 2023**

Kids in Need of Defense (KIND) is the leading U.S.-based organization dedicated to the protection of unaccompanied migrant children. KIND was founded by the Microsoft Corporation and United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 30,000 unaccompanied children in removal proceedings and formed pro bono partnerships with over 755 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. KIND also helps children who are returning to their countries of origin to do so safely and to reintegrate into their home communities. KIND’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.

Unaccompanied children are among the world’s most vulnerable individuals. They have traveled hundreds or thousands of miles to the United States, often completely on their own, to escape extreme violence, sexual abuse, human trafficking, and other dangers. Many of these children have fled northern Central America, a region gripped by humanitarian crises. With no protection in their countries of origin, children are forced to make a dangerous journey, and if they arrive to the United States, are immediately thrust into a complicated and protracted legal system. These children face daunting obstacles in their transition to the United States, including limited resources, language barriers, and the need to navigate the complex U.S. immigration system, often on their own.

Recognizing the unique vulnerability of unaccompanied children, Congress created fundamental procedural protections designed to help these children fairly access protection and navigate immigration proceedings to prevent their return to harm or exploitation. These safeguards, enacted on a broad bipartisan basis through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), build upon foundational child welfare safeguards for all children in federal immigration custody that are embodied within the *Flores* Settlement Agreement, signed by the federal government in 1997.

The necessity of these protections—and government-wide efforts to ensure the wellbeing of unaccompanied children—have only grown in importance in light of recent media articles and investigations documenting devastating and widespread labor exploitation of unaccompanied migrant children throughout many U.S. companies and industries. Many children have worked long hours or overnight shifts in factories producing goods or cleaning dangerous industrial equipment. Harmful conditions have led to chronic illness, the loss of limbs, and other severe

injuries. These reports have garnered critical attention to the need for a coordinated, whole-of-government effort to eradicate such exploitation, protect unaccompanied children’s safety, and empower these children to thrive in communities across the nation.

KIND strongly supports interagency efforts to prevent and combat child labor exploitation and to uphold TVPRA and *Flores* protections, which play an important role in reducing children’s vulnerability and facilitating their access to legal processes and supportive services that can advance safety and stability and mitigate risks of exploitation. We remain deeply concerned, however, about recent congressional proposals that seek to deter migration by weakening existing legal protections for unaccompanied children and other protection seekers and that would only compound the challenges and risks facing this vulnerable population.

KIND shares below several recommendations for preserving and fully realizing the aims of vital safeguards previously enacted by Congress and for additional steps that Congress and the Biden Administration can take to better ensure the wellbeing of unaccompanied children.

### **Uphold the TVPRA and *Flores* Agreement**

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)<sup>1</sup> and *Flores* Settlement Agreement (*Flores* or FSA)<sup>2</sup> together serve as the foundation for the protection of unaccompanied children in the U.S. immigration system. Central to ensuring the safety and well-being of unaccompanied children is the preservation of the safeguards provided in *Flores* and the TVPRA.

The *Flores* Agreement sets forth minimum standards for the treatment, release, and detention of children in immigration custody as well as independent monitoring and oversight provisions to ensure children’s care aligns with basic child welfare principles. The FSA requires the government to treat children with concern for their particular vulnerability as minors. Standards require that facilities in which migrant and refugee children are initially held be safe and sanitary and provide for children’s basic needs, among them food and water, bathroom needs, medical assistance, and contact with family with whom they were apprehended. The FSA also establishes a general policy favoring the release of children from detention “without unnecessary delay” to caregivers in the community and sets forth priorities for children’s placement during immigration proceedings, with a preference for release to parents and legal guardians and other adult relatives.

The TVPRA was passed by Congress on a broad, bipartisan basis after careful consideration of ways to prevent the return of unaccompanied children to harm, including human trafficking. The TVPRA requires that unaccompanied children be screened for fear of trafficking, persecution, or other harm prior to any repatriation or return, and that they be cared for by the Department of Health and Human Services (HHS), which is tasked with identifying the least restrictive placement appropriate for the child in the federal government’s care while it works to reunify the child with a safe family member or other sponsor who can care for them during their immigration proceedings—provisions that reflect safeguards in the FSA. Additional TVPRA safeguards aim to

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<sup>1</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

<sup>2</sup> *Flores v. Reno*, No. CV 85-4544-RJK (C.D. Cal. Jan. 17, 1997).

improve the fairness of immigration proceedings by providing children with an opportunity to have their asylum claims first considered in a non-adversarial interview setting more appropriate for children, rather than in immigration court, and by allowing children time to find a lawyer and present their cases in full removing proceedings rather than facing summary removal at the border. It also directs HHS to ensure to the "greatest extent practicable" that children have attorneys to represent them and provides for access to independent child advocates who can support the best interests of child survivors of trafficking and other vulnerable children.

Congress must reject any amendments, legislation, or other proposals that would weaken the TVPRA and *Flores*. Measures to improve the U.S. immigration system generally, and advance orderly and humane border processing specifically, should ensure, not imperil, the protection and wellbeing of unaccompanied children. KIND urges policymakers to support practical measures that would improve border management *and* appropriate treatment of children, while eschewing deterrence-based approaches that threaten the very harms to those children that Congress has worked for decades to prevent. Ultimately, meaningful reforms will build upon rather than erode the fundamental protections provided for in the TVPRA and *Flores*.

### **Provide Robust of Post-release Legal Services**

In its work providing legal and social services to thousands of unaccompanied children, KIND has witnessed the fundamental role that legal representation plays not only in assisting unaccompanied children in navigating their immigration proceedings and securing humanitarian protection against dangers they fled in their countries of origin, but also in identifying and safeguarding children against other threats to their well-being, including labor exploitation.

Many if not most unaccompanied children who are released from ORR custody in the United States still lack attorneys. HHS has set a vital goal of achieving legal representation of all unaccompanied children by FY 2027.<sup>3</sup> Consistent with this objective, and its statutory mandate to ensure legal counsel "to the greatest extent practicable," HHS should robustly allocate funding provided by Congress for the expansion of legal services for this vulnerable population. Congress, for its part, should increase relevant funding levels.

Attorneys often function as unaccompanied children's most trusted advocates in situations of exploitation. By law, the attorney-client relationship is a confidential one. That confidentiality, coupled with the unique rapport built over months or years of representation, can mean that a lawyer is the sole authority-figure to whom children feel safe disclosing information about mistreatment. Indeed, children experiencing labor trafficking may be restricted in their ability to communicate or be forced to move between states or jurisdictions. Out of reach of others in whom they may confide, some children may only be able to reach out to their attorney for help. With the child's permission, attorneys can report incidences of exploitative labor and coordinate with other professionals, helping extricate children from abusive work environments.

Without lawful immigration status, many unaccompanied children remain at risk of deportation to the same harms they fled. Unscrupulous employers and criminal actors frequently prey upon

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<sup>3</sup> Administration for Children and Families, "FY 2024: Justification of Estimates for Appropriations Committees;" (<https://www.acf.hhs.gov/sites/default/files/documents/olab/fy-2024-congressional-justification.pdf>).

children’s fear of removal, their age, and financial insecurity to lure or force children into exploitative conditions or to compel them to remain in them. Without an attorney, it is virtually impossible for unaccompanied children to navigate the complex and adversarial U.S. immigration system so as to obtain immigration benefits that serve as bulwarks against unsafe working conditions, wage theft, and other labor abuses. Attorneys play a vital role in evaluating children’s eligibility for legal protection, counseling children on potential options, and helping children to complete applications for relief where eligible. Such assistance frequently entails specialized experience working with survivors of harm and exploitation and collaboration with social workers and other relevant professionals to ensure the child’s immediate and long-term safety and wellbeing. For many children, legal assistance is lifesaving, and both prevents deportation to danger and enables them to escape situations of harm, abuse, and exploitation in the United States. With permanent protection, children can gain the stability needed to begin healing from trauma and to pursue long-term goals and security.

### **Expand Post-Release Social Services**

HHS should facilitate linguistically and culturally appropriate social services for all unaccompanied children for a minimum of 180 days following their release from ORR custody and for longer periods when caseworkers determine children require additional support. Such services may include in-home visitation by social workers, support with children’s educational enrollment and progress, connection to medical and mental health providers, and other assistance designed to uphold the safety of sponsorship settings, promote children’s integration into local communities, and provide children with tools for building secure and prosperous lives in the United States. Commendably, HHS has set a goal of providing post-release social services to all unaccompanied children by FY 2025.<sup>4</sup> It is vital that ORR realize that aim and that Congress appropriate funding accordingly.

Such post-release legal and social services represent an essential complement to pre-release sponsor suitability assessments, together forming a protective matrix helping ensure this vulnerable population’s safety, including against the risk of labor exploitation. Under the TVPRA and *Flores* Settlement Agreement, which serve as the dual foundation for the protection of unaccompanied children in the U.S. immigration system, unaccompanied children must promptly be placed in the least restrictive setting that is in the best interest of the child, with prioritization of placement with qualified parents, guardians, or other relatives. This requirement reflects recognition not only of the importance of safe placements, but also that prolonged government detention in congregate care settings and separation from family members are detrimental to the mental and physical health of children, often producing severe and enduring psychological trauma.

In short, children must not remain in government custody for needlessly extended periods of time when there are safe sponsors available. These harmful outcomes occurred under the prior Administration when, for example, a 2018 information-sharing agreement between DHS and ORR that threatened the use of sponsor information for immigration enforcement purposes

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<sup>4</sup> HHS, “Departments of Labor and Health and Human Services Announce New Efforts to Combat Exploitative Child Labor” (Feb. 27, 2023); <https://www.hhs.gov/about/news/2023/02/27/departments-labor-and-health-and-human-services-announce-new-efforts-combat-exploitative-child-labor.html>.

deterred good-faith sponsors, including loving family members, from coming forward to care for unaccompanied children, directly and needlessly protracting those children's government detention.<sup>5</sup>

It is vital, then, that ORR perform sponsor suitability assessments that are at once safe and expeditious. KIND supports ORR's recent audit of its sponsor suitability process, the identification of any procedural improvements promoting reunifications that serve both these ends, and agency efforts to ensure that currently required vetting guidelines are adhered to uniformly. Through a safe, timely placement process, combined with the provision of legal and social services to all unaccompanied children following placement with sponsors, ORR can help ensure the welfare of unaccompanied children both during and after their stay in government custody.

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<sup>5</sup> DHS, "HHS and DHS Joint Statement on Termination of 2018 Agreement" (Mar. 12, 2021); <https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement>.