



**Statement for the Record by Kids in Need of Defense (KIND)
“Trafficked, Exploited, and Missing: Migrant Children Victims of the Biden-Harris Administration”
House Committee on Homeland Security
Subcommittee on Border Security and Enforcement
Subcommittee on Oversight, Accountability, and Investigations
November 19, 2024**

Kids in Need of Defense (KIND) is the leading U.S.-based organization dedicated to the protection of unaccompanied children. KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have provided legal representation to more than 16,000 children in U.S. immigration proceedings, provided legal rights education to more than 75,000 children in the United States, and formed pro bono partnerships with over 800 corporations, law firms, law schools, and bar associations to provide children with pro bono representation. 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. Through its European Initiative, KIND and partners in Belgium, France, Greece, Ireland and the United Kingdom work to ensure access to high quality pro bono legal assistance for unaccompanied children in Europe.

Each year, thousands of unaccompanied children arrive to the United States, having fled extreme violence, sexual abuse, human trafficking, and other dangers in their countries of origin. Many of these children come from countries across Central America, and increasingly, from throughout the Western Hemisphere, as global displacement has reached historic levels due to war, political unrest, natural disasters, and other threats in many parts of the world. Unable to find safety in their countries of origin, children are often forced to undertake dangerous journeys, and once in the United States, face complex immigration proceedings. These children, many of whom have experienced severe trauma, confront numerous obstacles after arrival, 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 and congressional oversight documenting devastating and widespread labor exploitation, including in various cases labor trafficking, 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 children to thrive.

KIND strongly supports interagency efforts to prevent and combat child trafficking and 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 mistreatment. We remain deeply concerned, however, about recent congressional proposals that, by weakening existing legal protections for unaccompanied children, would make these children more vulnerable to trafficking and exploitation, not less.

As Congress considers measures to protect unaccompanied children it is essential that any proposals build on existing legal protections and treat unaccompanied children as children first and foremost--leveraging a trauma-informed and holistic response to meeting the needs of this particularly vulnerable population.

KIND recommends the following practical and achievable measures to reduce trafficking and exploitation risks to unaccompanied children, achieve new processing and resource efficiencies, and best deploy the expertise and experience of border personnel: 1) ensure robust compliance with anti-trafficking safeguards provided for by the TVPRA and ensure the ability of unaccompanied children to request protection at U.S. borders; (2) hire child welfare professionals in CBP facilities; (3) expand legal and social services for unaccompanied children; (4) support specialized children's dockets; and (5) ensure safe reintegration services for children who are ordered removed or have requested to return to their country of origin.

Prevention of Trafficking of Unaccompanied Children at U.S. Borders

When first arriving to the United States, unaccompanied children are initially processed by U.S. Customs and Border Protection (CBP), which must comply with specific protections provided for by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) regarding identification, screening, and transfer of unaccompanied children. Enacted with broad bipartisan support, the TVPRA created additional procedural safeguards for unaccompanied children in the immigration system to help ensure children's cases will be appropriately considered to prevent children's return to trafficking and other harm. Prior to the law's creation, border authorities often rapidly returned children back across the border to Mexico or to other countries without any assessment of whether the child would face persecution or other harm if returned. Traffickers and other criminal actors, accustomed to these practices, often waited on the other side of the border to target or recruit returning children.

The TVPRA's safeguards have protected thousands of children from trafficking, exploitation, and other harm and ensured that the federal government will be able to appropriately receive, screen, and care for unaccompanied children. Under the law's provisions, CBP must conduct an initial screening of unaccompanied children from Mexico and Canada to determine whether the child is at risk of or has a history of being trafficked, credibly fears persecution if returned, and is able to make an independent

decision to withdraw their application for admission to the United States.¹ If indicators of harm or risk are present, the child cannot make a voluntary decision about withdrawing their application, and/or CBP cannot make a decision within 48 hours, the child must be immediately transferred to ORR custody. For unaccompanied children from all other countries, the TVPRA provides that CBP must identify the child as unaccompanied within 48 hours and make a referral to ORR within 72 hours. ORR, which was tasked by the Homeland Security Act of 2002 with care and placement of unaccompanied children based on its experience with refugee children,² conducts intake screenings to identify indicators of trafficking or other protection concerns once a child is transferred to the agency's care.

Additional TVPRA protections help ensure that unaccompanied children are able to better navigate a system designed principally for adults and that the government can fully evaluate children's cases for legal protection. These protections include access to counsel and independent child advocates, exemption from the one-year filing deadline for asylum claims, and the opportunity for unaccompanied children to have their asylum claims first heard in a non-adversarial interview setting before U.S. Citizenship and Immigration Services (USCIS).³ Compliance with the TVPRA's safeguards at all times remains a critical component of migration management and safe, orderly, and humane border processes to ensure that children are never deported to trafficking and other harm and that they are able to obtain lasting protection.

Mindful of the need for improved care and protection of children during border reception, Congress has directed and on a bipartisan basis supported funding for the Department of Homeland Security to hire licensed child welfare professionals along the U.S.-Mexico border. These professionals, who will have expertise in identifying protection needs and trafficking indicators, will help advance child wellbeing at a critical point in a child's search for protection. They will also strengthen border security by freeing up agents and officers to focus on vital law enforcement functions for which they are specially trained. Efforts to place child welfare professionals in border facilities must be accompanied by DHS' robust compliance with national minimum standards for care and treatment of children in federal immigration custody, as provided for by the *Flores* Settlement Agreement. By providing for children's unique needs in all border processes and ensuring robust compliance with TVPRA and *Flores* protections, the federal government can better prevent trafficking and other harm and foster greater trust among children and families that can aid in the early identification and investigation of trafficking concerns.

Several prior border policies in the United States and the region have placed limitations on the ability of asylum seekers to request protection. The federal government has exempted unaccompanied children from many of these policies, such as Remain in Mexico, the Title 42 policy, and recent border asylum regulations, consistent with legal protections provided by the TVPRA.

It is imperative that all border policies recognize the particular vulnerability of unaccompanied children, uphold specific protections provided by the TVPRA, and ensure that unaccompanied children are exempt from any restrictions that limit, bar, or delay access to the border to apply for protection.

¹ 8 U.S.C. § 1232(a)(2).

² 6 U.S.C. § 279.

³ See 8 U.S.C. § 1232; 8 U.S.C. § 1158(a)(2)(E).

Importance of Legal and Social Services to Addressing Trafficking and Other Risks

Pursuant to the TVPRA and related legal settlements and regulations, unaccompanied children transferred to ORR care are to be placed into the “least restrictive setting” in the child’s best interests. ORR maintains a nationwide network of more than 289 facilities and programs in 29 states that it funds to provide temporary care and custody of unaccompanied children,⁴ including transitional foster care placements, shelters, and residential treatment centers. ORR provides for children’s basic care, medical care, counseling, recreation, and educational services, among other needs.

ORR works to reunify children in its care with safe and suitable sponsors pursuant to numerous policies and consistent with requirements set forth in the TVPRA. This process includes the potential sponsor’s completion of an application, and any required criminal background checks and public records checks. Pursuant to the TVPRA, ORR is also required to conduct home studies for certain particularly vulnerable children and may also conduct such studies in other cases where it may help in evaluating the sponsor’s safety and suitability.⁵ Following approval of a sponsor and the child’s release, ORR conducts safety and wellbeing follow-up calls within 30 days to verify the child’s safety, that they are living with a sponsor, that they know of pending court proceedings, and that they are enrolled in school.⁶ Although ORR’s role with a child formally ends after release, the TVPRA requires ORR to provide post-release services for unaccompanied children for whom a home study is required and also authorizes ORR to provide such services for other children with mental health or other needs who may benefit from them.⁷ ORR provides limited funding for these services; however, the comprehensiveness and duration of services varies depending on a child’s needs, available funding, and the child’s geographic location. Historically, a small percentage of children have received case management and post-release services, and where provided, such services typically only endure for a couple months. ORR also operates a National Call Center hotline that is operational 24/7 to connect children, sponsors, and providers with support and assistance.⁸

Pursuant to the TVPRA, ORR also must “to the greatest extent practicable” provide unaccompanied children with “counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.”⁹ ORR is also authorized to provide independent child advocates to represent the best interests of especially vulnerable children.¹⁰ Currently, however, many children must navigate complex immigration proceedings without an attorney. ORR has set a goal of ensuring legal representation for 100 percent of unaccompanied children by 2027, an important commitment that will necessitate ongoing support by both the agency and Congress. Fulfilling this aim

⁴ ORR, Unaccompanied Children Bureau Fact Sheet (Nov. 1, 2024), <https://www.acf.hhs.gov/orr/fact-sheet/programs/uc/fact-sheet>.

⁵ 8 U.S.C. § 1232 (c)(3)(B).

⁶ ORR Policy Guide § 2.8.4.

⁷ 8 U.S.C. § 1232 (c)(3)(B). Pursuant to the ORR foundational rule and related policy, such services “may include linking families to educational and community resources, home visits, case management, in-home counseling, and other social welfare services, as needed.” 89 Fed. Reg. 34384, 34587 (Apr. 30, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-04-30/pdf/2024-08329.pdf>.

⁸ ORR, Office of Refugee Resettlement National Call Center, <https://www.acf.hhs.gov/sites/default/files/documents/orr/national-call-center-eng.pdf>.

⁹ 8 U.S.C. § 1232(c)(5).

¹⁰ *Id.* at § (c)(6).

will prove beneficial in identifying and mitigating myriad risks that unaccompanied children may be facing, both related to and independent of their immigration case.

Unaccompanied children are often eligible for various forms of humanitarian protection. Applying for such protection necessitates that the child disclose and be interviewed about sensitive information regarding harm and trauma they have experienced—a significant challenge for many children who have survived serious violence, threats, or abuse, including at the hands of adults and other authority figures. In the months or years working on the child’s legal case and due to the confidentiality of the attorney-client relationship, the child may develop the trust and rapport with an attorney that is necessary to be able to disclose experiences of trafficking, exploitation, or other circumstances giving rise to a need for protection. Children may also share information indicating unstable housing, financial insecurity, health challenges, issues at school, or other challenges that could exacerbate their vulnerability to trafficking and other harm and suggest a need for social services support or engagement by child welfare professionals or other authorities.

Attorneys can work with the child to screen for any legal protections for which the child is eligible, provide the child with information about child labor laws and other legal rights, refer the child to trusted community organizations and other professionals for social and other services, and work with the child to assist them, where appropriate, in reporting concerns to child welfare or law enforcement authorities. Legal assistance may also include helping eligible children to apply for a Child Eligibility Letter or interim assistance with the Department of Health and Human Services’ Office on Trafficking in Persons (OTIP). This form of assistance offers children who have experienced or potentially experienced trafficking to access services and benefits to the same extent as refugees. These benefits include case management, food and cash assistance, health insurance, education, and housing.¹¹ Interim assistance can also help eligible children access the Unaccompanied Refugee Minors (URM) program, which provides for children’s care with a foster family or in a group home. Without an attorney, however, child survivors of trafficking may remain unaware of protections for them and could become vulnerable to re-trafficking and other exploitation.

For many children, legal assistance can make a lifesaving difference—facilitating access to humanitarian protection so the child will not be deported to harm and helping children find safety from situations of violence, abuse, trafficking, and exploitation they may confront in the United States. Attorneys can also help children apply for work authorization, which provides a vital form of government-issued photo identification for children, even when not used for work. Such identification is frequently necessary to access services such as health insurance, to obtain a social security card, or to receive a driver’s license. For older youth, work authorization can improve access to safe, lawful jobs that enable children to more easily avoid exploitative situations and harmful working conditions.

The importance of offering post-release legal and social services for unaccompanied children cannot be overstated.¹² Longstanding child welfare and medical research has documented the potential for traumatic experiences, known as Adverse Childhood Experiences (ACEs), to have long-term impacts for

¹¹ See Dep’t of Health and Human Services, ACF, Office on Trafficking in Persons, Child Eligibility Letters <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters>.

¹² See generally Migration Policy Institute, Strengthening Services for Unaccompanied Children in U.S. Communities (2021), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf [hereinafter “MPI report”].

children’s development, health, and wellbeing, including in adulthood.¹³ Unaccompanied children often endure numerous ACEs and significant trauma due to prior experiences. However, children frequently have only limited access to case managers, social workers, or supportive services after they are released from government care.¹⁴ Legal and social services can help to ensure children’s needs are promptly identified and addressed and build on children’s existing self-help skills and resilience. Such assistance can help mitigate risks to children and promote safety in both the short- and long term.

Concerns About Children Missing or Trafficked Following Release from ORR Care

Recent news reports and congressional oversight efforts have galvanized concern for children’s safety after release from ORR custody. Some of these efforts have inaccurately indicated that nearly 85,000 unaccompanied children are “missing” or being trafficked, based on information that ORR was unable to reach children during follow-up safety and wellbeing calls. Reports have also misleadingly asserted that 300,000 unaccompanied children were “lost” by DHS, misrepresenting information in an August 2024 report by the DHS Office of Inspector General stating that DHS had not filed Notices to Appear (NTAs) in immigration court for these unaccompanied children.¹⁵ Based on this information, Members of Congress have advanced several proposals that would enact new restrictions on sponsors, limit TVPRA protections, and risk prolonged detention of children.

While efforts to ensure children’s safety are paramount at all times, data about ORR call pickups is not a reliable indicator of children’s safety or trafficking risk. There are many reasons why a child or family may not have responded to ORR’s calls. A child or sponsor may not have been home or available to respond to the call, may not have recognized the caller’s phone number, or may have recently changed their phone number. By indicating that tens of thousands of unaccompanied children have been trafficked, based on missed phone calls, these mischaracterizations risk diverting resources away from current trafficking investigations and assistance for children currently experiencing harm.

Such reports also obscure the limitations of existing data. To date, data on trafficking and exploitation of unaccompanied children in the United States and worldwide remains incomplete, and accurate data collection remains a necessary priority. Various factors exacerbate these limitations, among them inconsistent methods for identifying and documenting trafficking and exploitation; fear among survivors that reports could lead to immigration enforcement or retaliation against the child and their family; and confidentiality protections and concerns.¹⁶ Improving children’s access to necessary services and

¹³ CDC, About Adverse Childhood Experiences, <https://www.cdc.gov/aces/about/index.html>.

¹⁴ See MPI report, *supra* note 12, at 1 (“In most years, only a minority of children receive case management, legal services, or both, and most children receive no federal follow-up services other than a call 30 days after their release to check on their safety and well-being.”).

¹⁵ See Associated Press, FACT FOCUS: Claims that more than 300,000 migrant children are missing lack context, <https://apnews.com/article/fact-check-misinformation-migrant-children-missing-7ab0cea2fd2238346197429e952baa8b>

¹⁶ See, e.g., AAP, Clinical Report, Exploitation, Labor and Sex Trafficking of Children and Adolescents: Health Care Needs of Patients, <https://publications.aap.org/pediatrics/article/151/1/e2022060416/190310/Exploitation-Labor-and-Sex-Trafficking-of-Children?autologincheck=redirected> (“Reliable national prevalence data for child labor and sex T/E in the United States are not yet available.”); U.S. Department of State, About Human Trafficking, <https://www.state.gov/humantrafficking-about-human-trafficking/> (“It is hard to find reliable statistics related to human trafficking. The quality and quantity of data available are often hampered by the hidden nature of the

expanding training about all forms of trafficking among agencies and providers can promote better data collection and enhance programming for impacted children.

Similarly, claims that children are missing based on DHS' having not filed Notices to Appear for court proceedings mischaracterize protections for unaccompanied children in the U.S. immigration system. Following an unaccompanied child's arrival to the United States and consistent with the TVPRA, DHS places the child in full immigration removal proceedings, in which the child will have an opportunity to apply for any protections for which they are eligible, including affirmatively applying for asylum with USCIS. Typically, Immigrant and Customs Enforcement does not file the child's NTA with the immigration court to formally commence the child's proceedings until after the child is released from ORR. This is essential to ensure the child has an opportunity to obtain legal counsel prior to proceedings and also recognizes that a child may be released to the care of a sponsor in a different state or location than they initially arrived to the United States. Without such delayed filings, notices may be sent to locations where children no longer reside, creating significant due process concerns and administrative inefficiencies for ICE, the immigration courts, and children and their families alike. DHS's not having filed an NTA with the immigration court does not correlate with a child's being missing or trafficked.

Indeed, prevention of trafficking and other harm is best achieved not through immigration enforcement against vulnerable children, but in ensuring the availability of appropriate screening and services for them. The provision of post-release legal and social services is critical. Additional measures across government agencies can bolster fair adjudication of children's protection cases, identify trafficking of children, and help ensure children's safety.

Specialized Children's Dockets in Immigration Court

The Executive Office for Immigration Review recently issued policy guidance encouraging the creation of specialized children's dockets to address the legal cases of unaccompanied children.¹⁷ These dockets will ensure that immigration judges specially trained in child-centered and trauma-informed practices oversee children's cases—improving the quality of adjudications, ensuring children's access to legal protections available through other agencies such as USCIS, and enabling efficiencies for government agencies administering and working amid court dockets. Under these dockets, DHS attorneys will be similarly trained in forms of legal relief available to children, child-sensitive interviewing techniques, and trauma-informed practices. Children's dockets can also facilitate the identification of and provision of assistance to child victims of trafficking by enabling the presence of trained nonprofit attorneys and organizations at court locations who can screen children for protection needs, provide information to children about their legal rights, and connect children with services providers and professionals. Together, these measures can create a more child-centered adjudication process that can mitigate risks to children and enhance access to vital protection.

crime, challenges in identifying individual victims, gaps in data accuracy and completeness, and significant barriers regarding the sharing of victim information among various stakeholders. For these reasons, data and statistics may not reflect the full nature or scope of the problem.”).

¹⁷ Executive Office for Immigration Review, Director's Memorandum 24-01: Children's Cases in Immigration Court, Dec. 21, 2023, <https://www.justice.gov/d9/2023-12/dm-24-01.pdf>.

The EOIR guidance reflects in important respects key provisions of the Immigration Court Efficiency and Children’s Court Act,¹⁸ bipartisan legislation introduced in Congress in 2023. Further, language in the bipartisan FY25 Commerce, Justice, and Science (CJS) appropriations report commends EOIR for its establishment of these dockets and requires the agency to report on their implementation. Additional efforts to implement and expand these dockets promise improvements to safety and protection for children and administration and efficiency for the government.

Safe Return and Reintegration Services

Protection of unaccompanied children at all points necessitates ensuring that children are never returned to harm—and that any child ordered removed or requesting to return to their country of origin will be safely received and cared for following return. The TVPRA directs the federal government to consult Department of State reports on Human Rights and Trafficking in Persons in evaluating whether a child may be safely returned to a country and similarly provides for a return and reintegration pilot program to protect children from trafficking and exploitation and to implement best practices for safe return and reintegration.¹⁹ To date, several nonprofit organizations, including KIND and its community-based partners in Guatemala and Honduras, have collaborated to provide return and reintegration services that help to screen unaccompanied children for any protection needs or other concerns, provide predeparture counseling, coordinate safe reception, and connect children with reintegration services upon their return. In addition to helping to ensure that children are not returned to harm and assisting their safe return, these services can help to prevent future trafficking and other harm by facilitating children’s access to protection, education, housing, medical and mental health care, counseling, case management, and opportunities that can reduce the need for children to re-migrate and undertake dangerous journeys to find safety and assistance. By helping children to secure protection at the earliest point possible, these services can also reduce pressure on U.S. border operations and facilities.

KIND recommends that the federal government formally establish and dedicate ongoing funding for a return and reintegration program for El Salvador, Guatemala, and Honduras, to be led by individuals with expertise in child migration and child protection. This may be achieved through partnerships with community-based organizations that can help to improve the accessibility of services for children wherever they are in need. Additional efforts can grow such programs over time to reach children returning to any countries of origin, including through cross-border case management.

Conclusion

KIND welcomes Congress’ continued commitment to the wellbeing of unaccompanied children at all points in their migration journey. We urge Congress to ensure that all federal agencies uphold critical anti-trafficking protections created by the TVPRA as well as the *Flores* Settlement Agreement, and support critical services that can help reduce children’s vulnerability to harm, help children secure lasting safety, and nourish children’s resilience to grow and make valuable contributions to their communities and the United States.

¹⁸ H.R. 6143; S. 3178.

¹⁹ 8 U.S.C. § 1232(a)(5)(A)-(B).