



Testimony
Senate Appropriations Committee
July 10, 2014

The United States is experiencing a refugee-like crisis. Children from Central America are running for their lives because their countries have become virtual war-zones and their only choice is either run or stay and be killed. The crisis is not only on our doorstep, but it is being felt regionally. This is not an inconvenient immigration problem, it is a serious child protection issue. There is no simple and swift solution. It is complex and needs both short term and long term attention and solutions. How we respond to a crisis of children in need of safe haven says a lot about our country and ourselves. The US has correctly been quick to demand that other countries around the world protect children in danger by offering care, compassion, and a commitment to long-term solutions. We can do no less.

The numbers speak for themselves. From 2004 to 2011, the numbers of unaccompanied children coming to the US each year averaged 6,800. In fiscal year 2012, their number jumped to more than 13,000. The following fiscal year, 2013, more than 24,000 children came. This fiscal year, 2014, we're on track to see over 70,000 and some estimates are as high as 90,000. Next year their number is expected to increase to 127,000. One weekend not long ago, 1,000 children crossed alone into the U.S.

The US is not alone in experiencing the flow—this is a regional crisis. The kids are fleeing to wherever they can. Many decide to go north to the US because they have family here or a connection to the US, but the United Nations Refugee Agency (UNHCR) found that asylum requests by Hondurans, Salvadorans and Guatemalans seeking refuge in countries south has increased 712 percent. Children are also fleeing within their own borders. The top three sending nations of El Salvador, Honduras, and Guatemala are experiencing significant numbers of their own people being internally displaced.

Not only have the numbers changed, but who is coming is different. For years it was much more common to see older teens, the large majority male, coming to the US alone. Now there is a significant increase in children under age 12 and almost half the children coming are girls. Many experience sexual violence during their journey; a number are pregnant from rape that occurred either in their home country or while they were migrating. The fact that children are

coming younger and that more girls are coming despite the well-known risk of sexual assault along the journey underscores the desperation that is pushing the children out of their home countries.

Honduras has had the highest murder rate in the world for the last four years, according to the United Nations. The President of Honduras said in a visit to the US last week that the Honduran children coming alone to the US “are displaced by war.” The State Department has issued a warning to Americans not to travel to Honduras or El Salvador. The violence level in all three countries is described by our own government as being “critically high” and “the police can’t protect you.”

A March 2014 report by the UN Refugee Agency (UNHCR) on unaccompanied children in Central America and Mexico found that the primary reason for these children’s flight is increasing violence in Central America driven by drug cartels and a variety of other criminal elements, and that the majority of these children should be screened for international protection. Numerous other reports confirm this, as do the children referred to KIND: most describe fleeing forced gang recruitment and violence for refusing to join with criminal groups, as well as threats and harm to family members and friends.

Smugglers are clearly taking advantage of the situation and doing what is best for business, likely spreading false information to gain more clients. Ironically, the smugglers and traffickers are often connected to the gangs and narco-traffickers that drove the children out of their home countries to begin with. The US needs to prioritize identifying, disrupting and dismantling the transnational criminal smuggling networks.

The U.S. system that governs the custody, care, release, and social and legal services for these children was not built to address the needs of these numbers of children. The system must be entirely re-worked in order to embrace child protection as its core. Our current system does not use a best interests of the child standard in decision-making regarding these children, despite the fact that it is the cornerstone of child protection around the world and the basis of our child welfare and juvenile justice systems. Our immigration system is adversarial and treats children not much differently than adults.

While KIND welcomes the administration’s supplemental request of \$3.7 billion to address the humanitarian crisis at our borders. But we are concerned about the allocation of funding in the request. While we well understand the need for support to the Department of Homeland Security at the border given the huge numbers of unaccompanied children presenting themselves at our southern border, the funding - \$1.1 billion for Immigration and Customs Enforcement and \$433 million for Customs and Border Protection, dwarfs the funding request for the Department of Justice - \$64 million - for immigration judges and legal services. Chronic

underfunding of our immigration courts has long pre-dated the current crisis. The result is years-long backlogs and cases that stretch into years. This situation will only get worse, particularly if the 40 immigration judge teams are only temporary. This funding is a short-term and ineffective patch on a long-term and deep problem. Significant more funding, proportionate to DHS, must be provided to DOJ.

The provision of counsel for unaccompanied children must be a significant part of this funding. The request's allocation of \$15 million is inadequate to reach a majority of the children. It would be unconscionable for the United States to adjudicate these children's cases without an attorney, as many may qualify for refugee status, as UNHCR has found. This means they are fleeing a level of persecution from which they need protection outside their borders, in a country that can provide them asylum. This means that the majority of these children could face serious harm, even death, if returned to their home country.

It is nearly impossible for unaccompanied children to represent themselves in immigration proceedings. The large majority of these children, who range in age from toddlers to teenagers, do not speak English, have had little education, have no idea how the United States immigration system works, and do not know their rights or the options open to them. The U.S. immigration system is complex and arcane even for those trained to work within it. Many of the children are traumatized by their experiences in their home countries that pushed them to flee, and by the difficult and dangerous journey to the United States.

If adjudications and deportations are expedited, as the administration has said it will do, it is even more vital that children have attorneys as they will need particular assistance and guidance in presenting their case in an abbreviated length of time. If unaccompanied children are forced to remain in custody until their cases are adjudicated, to not provide counsel to a child who is also deprived of his/her liberty would be a shockingly inhumane and a stark violation of human rights. These children deserve a full and fair adjudication of their cases.

How could a 5-, 9-, 12, even 15-17-year-old be expected to present their case before an immigration judge and defend against a government attorney who is arguing for the child's deportation?

Counsel for unaccompanied children who are released from custody would mean that immigration judges would not have to postpone adjudication repeatedly, as they often do, hoping that when the case is heard the next time, the child will have found a lawyer. These continuances clog up already hugely overburdened court dockets and are a waste of time and money. Children with representation are more likely to appear for their court dates and obey court orders. Counsel would result in efficiencies that allow for cost savings to the government.

The provision of counsel does not need to be limited to appointed counsel. The most efficient use of resources would be to use a mix of pro bono and appointed counsel. The private sector has contributed significantly to the representation of unaccompanied children in removal proceedings, donating tens of millions of dollars worth of pro bono representation. Pro bono efforts, however, must be reinforced by government resources to support representation of children in cases for which counsel is needed very quickly or for which no attorney has been found.

Allowing the most vulnerable immigrants to appear in immigration court alone, “is simply not who we are as a nation. It is not the way in which we do things,” Attorney General Eric Holder said in testimony before the Senate Judiciary Committee.¹ As Attorney General Eric Holder also stated, “It is *inexcusable* that young kids . . . have immigration decisions made on their behalf, against them . . . and they’re not represented by counsel.”²

Former Assistant Secretary of Immigration and Customs Enforcement, Julie Myers Wood, told the House Judiciary Committee in a February 5, 2013 hearing, “In any new legislation, Congress should consider taking steps to assist indigent and vulnerable aliens to retain counsel at government expense. This is particularly important for unaccompanied minors and immigrants with competency issues. Although ICE attorneys and immigration judges regularly identify legitimate claims by aliens who are not represented by attorneys, the system should not rely on the ability of opposing counsel or overworked judges to locate valid claims.”

Ms. Myers Wood also noted the inefficiencies in the system created when a detained immigrant does not have a lawyer and called it “abominable” that under our current system, unaccompanied children or those with mental disabilities don’t have counsel.³

As with the request for DOJ, the request for the State Department -- \$300 million -- is a start, but Central America has been neglected by the United States in terms of development assistance for years - and we are now seeing the result. The top sending countries of these children -- Honduras, El Salvador, and Guatemala - need stronger support from the United States to develop their national child welfare systems, for example, which are nominally functional and are unable to provide even limited protection or assistance to children who need protection. Long-term support for these systems, as well as other humanitarian and

¹ Testimony before the Senate Judiciary Committee Oversight Hearing, March 6, 2013.

² Terry Greene Sterling, *Undocumented Kids Crossing the U.S. Border Alone in Increasing Numbers*, The Daily Beast, Mar. 23, 2013 (available at <http://www.thedailybeast.com/articles/2013/03/23/undocumented-kids-crossing-the-u-s-border-alone-in-increasing-numbers.html>) (emphasis added).

³ Katharina Obser, *Importance of Counsel for Asylum Seekers and Immigrants in Detention Stressed by Faith, Civil Rights, Legal, and Other Leaders*, Human Rights First (April 26 2013).

development assistance, would enable children to stay in their home countries and prevent them from feeling they have to leave their country to save their lives.

This leads to another significant gap in the U.S.'s treatment of these children -- a lack of return and reintegration assistance. We largely do not know what happens to children when they are returned. In one case we do know, a boy deported from the U.S. was murdered 17 days after his return by the very gang members on whom his unsuccessful claim for U.S. protection was based. As a top destination country, we must ensure the safe return and reintegration of unaccompanied children into their home country so that we do not return these children to harm and so they can remain sustainably in their home communities.

KIND's Guatemalan Child Return and Reintegration Project is an example of how such programs can be created in the future with success. KIND has partnered with four local nongovernmental organizations in Guatemala which help provide services to returning children, based on an intake conducted by KIND social workers before the child leaves the US. The NGOs follow up with the child to check in and visit as needed. To date, KIND has helped 117 children return safely and remain sustainably in Guatemala.

KIND is hopeful that this historic migration of unaccompanied children to the United States will in the end result in a U.S. system with enhanced child protection mechanisms and one in which children are treated as they need and deserve to be treated - as children first and foremost.