

**Statement of Maria Woltjen, The Young Center for Immigrant Children's Rights:
Preserving Necessary Protections for the Most Vulnerable Children**

Chairwoman Mikulski, Ranking Member Shelby, and Members of the Committee:

On behalf of the Young Center for Immigrant Children's Rights at the University of Chicago ("Young Center"), I submit this statement for the Committee's July 10, 2014 hearing addressing President Obama's emergency supplemental request for unaccompanied children and related matters. The Young Center operates the only program providing independent Child Advocates to child trafficking victims and other vulnerable, unaccompanied children pursuant to the Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA).¹ The role of the Child Advocate is like that of a guardian *ad litem*: to identify and represent the best interests of the child, and to develop recommendations pertinent to repatriation, custody, detention, family reunification, and legal representation. For the last 10 years, we have served as the independent Child Advocate for many hundreds of vulnerable, unaccompanied children.

We commend the Administration for proposing an increase in funds to ensure that vulnerable children receive appropriate care and protection. However, we caution Congress against making this funding contingent upon a roll-back of the TVPRA, passed by a bi-partisan Congress in 2008.

The treacherous journey to the U.S.-Mexico border is an act of desperation. The United States has an obligation to ensure that unaccompanied immigrant children are not returned to situations in which they will be trafficked, abused, persecuted, or killed and that they receive *meaningful* protection while they are in our care. The UNHCR study, *Children on the Run*, confirmed that a majority—at least 58%—of Central American children fleeing to the United States would qualify for international protection.²

Child immigrants are first and foremost *children*, and we must treat them as such. In considering the President's request, we urge Congress to uphold the following principles.

Congress must prohibit accelerated removal proceedings for vulnerable children.

Children's cases should be adjudicated in a timeframe that respects the child's age, development, and history of trauma. Children's proceedings should only be advanced when it is in the child's best interests—not simply to reduce government expense. Children's reaction to trauma is complex and can significantly affect their ability to process information and talk about what they have experienced. Forcing children to participate in accelerated removal proceedings significantly increases the likelihood of errors since the decision maker may have incomplete information. Many children, particularly traumatized children, are unable, in a short period of time, to talk about what happened to them, why they are here, what they are afraid of.

In appropriating funds, Congress should ensure that every child is represented. All children in immigration removal proceedings should have an attorney. No child should appear unrepresented in an adversarial proceeding before a judge where the government is represented by a lawyer. The right to counsel for unaccompanied children is "an emerging norm under international law" necessary to safeguard against refoulement.³ Representation by legal counsel

in any proceeding is also a crucial due process protection in keeping with our nation's commitment to fair judicial and administrative proceedings involving children. Unaccompanied immigrant children are unable to effectively represent themselves in a complex system where they are unfamiliar with the laws, procedures, or language. In no other domestic system involving children would a child proceed completely unrepresented. For those reasons, we also urge Congress to appropriate the funds requested by the President for the expansion of direct legal representation programs administered by the Department of Justice (DOJ).

Independent TVPRA Child Advocates should be appointed for particularly vulnerable children, including any child who expresses a fear of return, or if repatriation would separate the child from a parent in the United States. For over forty years, the federal government has recognized the importance of the appointment of a guardian *ad litem* to protect the interests of children involved in the child welfare system.⁴ International law recognizes the importance of the appointment of a guardian as a procedural safeguard to ensure consideration of the child's best interests, particularly in cases in which repatriation is considered.⁵ The Child Advocate's role is to advocate for the child's best interests in all decisions, a role which is distinct from a legal representative who represents the expressed (stated) interests of the child. Child Advocates' fact-based Best Interests Recommendations are grounded in U.S. law and well-accepted international child protection principles. These principles require consideration of factors including the child's safety, family integrity, liberty, wishes and development. Best interests recommendations do not turn on abstract or paternalistic judgments about where a child may be happier or have access to greater economic opportunity, rather the focus is on a child's safety and well-being. Thus, a Child Advocate may recommend that it is in a child's best interests to return to his or her country of origin if the child can be safely returned. Alternatively, the Child Advocate's Best Interests Recommendation may indicate that the child will be unsafe upon return because, for example, there is no responsible adult willing and able to care for the child.

The Child Advocate program should be expanded to serve both detained and released children as provided in the Violence Against Women Act of 2013. The Violence Against Women Act of 2013 amended the TVPRA to provide for expansion of the Child Advocate program to six new sites over four years. These programs are intended to serve both detained and released children.⁶ It is critical at this time, to expand Child Advocate programs to serve the population of detained and released children.

Congress should ensure that all federal agencies adhere to the court-approved Flores settlement agreement regarding the care and custody of unaccompanied children. Children who remain in government custody must be placed in the least restrictive setting and provided with education, recreation, social orientation, and medical services, in addition to shelter and food. The *Flores* settlement also provides that children be promptly released to family while they go through the immigration process. The Young Center strongly urges the federal government to develop mechanisms to expeditiously release children to properly vetted, safe sponsors.

Federal decision-makers should consider the child's best interests in all decisions. All states and territories of the United States have laws which require that a child's best interests be considered when decisions are made about a child's custody or other "critical life issues."⁷ The

TVPRA recognizes the importance of best interests considerations by providing for the appointment of an independent Child Advocate to advocate for the best interests of the individual child. The best interests of the child is determined on a case-by-case basis and includes the consideration of the child's wishes with due regard for the child's age and maturity, as well as the safety and well-being of the child. Domestic and international law both recognize the vulnerability of children and the need for special safeguards to ensure safe repatriation and reintegration of children.⁸ No child should be returned to his or her country of origin without an independent assessment of the child's best interests.

The United States government should develop a comprehensive and collaborative approach to address the causes of children's unprecedented migration without sacrificing well-established principles of child protection. This approach should take into consideration the endemic violence, public insecurity, and weak political structures of Honduras, Guatemala and El Salvador, as well as poverty and other conditions, including the recent 6.9 magnitude earthquake on the border of Mexico and Guatemala. The level of violence in Central America has reached a crisis level. Between 2010 and 2013, at least 458 children under 14 years of age were killed in violent circumstances in Honduras.⁹ In the first three months of 2014, 271 people under the age of 23 were murdered in Honduras.¹⁰ The U.S. Department of State has recognized that the level of crime and violence in Central America, particularly in Honduras, "remains critically high."¹¹ This has led to a nearly 712% increase in asylum applications from citizens of Honduras, Guatemala, and El Salvador to the countries of Mexico, Panama, Nicaragua, Costa Rica and Belize over the past five years.¹² In a study released by the American Immigration Council this month, nearly 60% of Salvadoran children who were interviewed indicated that crime, gang threats, or violence were the main motivators for leaving home.¹³

The United States government should engage in meaningful regional discussions to address the root causes of the forced displacement of children, and invest in meaningful programs—often operated by NGO's in the three countries—which can help with the successful reintegration of children who return to their countries of origin, helping to ensure their safety so that they are not forced to flee again.

It is critical that Congress protect the 2008 Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA was intended to providing meaningful procedural and substantive protections for unaccompanied immigrant children¹⁴ from both contiguous and non-contiguous countries. Prior to the 2008 TVPRA, Mexican children typically did not enter protective custody. The TVPRA screening was intended to identify those Mexican children with protection needs: trafficking victims, those at risk of persecution, and survivors of other dangers. However, even with these added screenings, the number of Mexican children in federal custody did not increase nearly as much as anticipated, in large part because the screening is undertaken by armed, uniformed CBP officials whose primary mission is to protect the borders. Advocates believe that vulnerable Mexican children are not appropriately identified.¹⁵ Applying these screenings to non-Mexican children would significantly increase the number of relief-eligible children—children at risk of persecution, trafficking, abuse, or other safety concerns—who are unlawfully turned away at the U.S. border, and returned to certain harm.

The TVPRA also codified the government's obligations under the *Flores* settlement to place unaccompanied immigrant children in the least restrictive setting. Placing unaccompanied children in the custody of the Office of Refugee Resettlement allows traumatized children the space to recover from their journey in a less threatening environment and to disclose trafficking, persecution, or other exploitation. Finally, the TVPRA allows children to pursue claims of asylum before the asylum office, a much more appropriate setting for children.

¹ See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, § 235(c)(6), 8 U.S.C.A. § 1232(c)(6) (West 2014) (“TVPRA”) (allowing the appointment of Child Advocates for child trafficking victims and other vulnerable, unaccompanied alien children).

² UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection (Children on the Run)*, Mar. 2014, at 25, available at <http://www.unhcrwashington.org/children/reports>.

³ Brian Rowe, *The Child's Right to Legal Assistance in Removal Proceedings Under International Law*, 10 Chi. J. Int'l L. 747, 768 (2010).

⁴ See Child Abuse Prevention and Treatment Act (CAPTA) of 1974, Pub. L. No. 93-247 (codified at 42 U.S.C. §§ 5101-5107).

⁵ See UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, ¶ 21, available at <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>.

⁶ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4 (codified as 42 U.S.C. sec 1371).

⁷ Child Welfare Information Gateway, *Determining the Best Interests of the Child* (2013), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/bestinterest.pdf.

⁸ TVPRA Section 235(5)(A); General Comment No. 6, ¶¶ 84, 92-93. See also principal of non-refoulement.

⁹ Press Release, Inter-Am. Comm'n on Human Rights (IAHCR), IACHR Expresses Concern over Violent Deaths of Children, Adolescents, and Youths in a Context of Citizen Insecurity in Honduras (May 14, 2014), available at http://www.oas.org/en/iachr/media_center/PReleases/2014/056.asp.

¹⁰ *Id.*

¹¹ Department of State Travel Warning, June 24, 2014, available at <http://travel.state.gov/content/passports/english/alertswarnings/honduras-travel-warning.html>. See also, Public Insecurity in Latin America, FTI Consulting, Mar. 2014, available at <http://www.fticonsulting.com/global2/media/collateral/united-states/2014-latin-america-security-index.pdf> (stating “entire portions of its sovereign territory out of control of the central government due to drug cartel activity, and extremely high homicide and violent crime rates, in part due to the “maras” (gang) activity”).

¹² *Children on the Run*, supra note 2.

¹³ Elizabeth Kennedy, American Immigration Council, *No Childhood Here: Why Central American Children Are Fleeing Their Homes* (2014).

¹⁴ An unaccompanied alien child is a child under the age of 18 years, with no lawful status in the United States, and either no parent or legal guardian in the United States or no parent or legal guardian available to provide care and custody. 6 U.S.C. § 279(g)(2).

¹⁵ Appleseed Foundation, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (2011), available at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.