



Statement of the American Immigration Lawyers Association

Submitted to the Senate Committee on the Judiciary

Hearing: “The Unaccompanied Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?”

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Contact:

Gregory Chen, Director of Advocacy

gchen@aila.org

Phone: 202/507-7615

1331 G Street, NW

Washington, DC 20005

Fax: 202/783-7853

As the national bar association of more than 14,000 immigration lawyers and law professors, the American Immigration Lawyers Association (AILA) respectfully submits this statement for the record.

During the summer of 2014, the United States experienced a peak in the number of unaccompanied children and families from El Salvador, Guatemala and Honduras arriving at our southwestern border, fleeing from extremely high murder rates, gang violence, domestic violence, and sexual assault. The life threatening dangers in these Northern Triangle countries have not subsided.

Conclusive evidence shows that high percentages of migrants from the Northern Triangle have suffered persecution and have valid claims for protection under U.S. asylum and humanitarian law. Government data shows that 88 percent of the mothers and children detained in family detention facilities are proving to the government they are likely to be found eligible for asylum and other forms of humanitarian relief by an immigration judge. The UN High Commissioner for Refugees similarly concluded that Central American (as well as Mexican) women and girls qualify at extremely high rates for asylum and other legal protection under U.S. law.

Our nation was founded on the principle that we will give shelter and protection to those fleeing persecution and violence, and that we will never forcibly return someone to face the persecutions from which they fled. But our commitment to these values and America's moral authority in the international community is being shaken to its core by the Obama Administration's harsh and inhumane treatment of vulnerable Central American migrants. Despite initially calling the situation "an urgent humanitarian crisis" in June 2014, the Administration quickly shifted toward aggressive enforcement measures with the clear purpose of deterring future asylum seekers and migrants from coming.¹ The Administration increased the use of family detention and applied fast-track removal processes against the Central American families and children.

The Administration has not treated the increase of unaccompanied children fleeing to our border as an urgent humanitarian crisis. Instead it has emphasized the deterrence of Central American migrants from coming to the U.S. as part of a larger border security strategy. Our country's primary concern should be the welfare of vulnerable children, families and adults seeking safety.

¹ June 30, 2014 Letter from President Obama to Congress, available at www.aila.org/uac.

Recently, criticism has focused on the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR)'s protection and care of children, and specifically the need for additional measures to protect children who are being released to sponsors. A recent GAO report revealed problems with HHS protection procedures, which need to be addressed. But these problems are a result of an Administration that is more focused on get-tough deterrence strategies than on the best interests of these vulnerable children. The Administration must ensure that HHS has the resources and support it needs to be able to serve the best interest of each child. HHS is far better equipped than other agencies, including the Department of Homeland Security (DHS) and its component agencies, to determine how best to protect these children.

For example, in early January of this year, DHS conducted raids across the country resulting in the arrest of 121 mothers and their children. As recent as February 2, 2016, DHS Secretary Jeh Johnson announced that raids on recent border crossers and deportations will continue. This Administration is using the most aggressive enforcement actions available on the most vulnerable population. These tactics have severely eroded the guarantees of due process and fairness in our legal system. They are not consistent with our nation's most fundamental values and must end.

Our laws guarantee that every individual fleeing persecution and violence is afforded a fair and meaningful opportunity to seek asylum and protection under U.S. law. Removal proceedings need to be conducted in a way that ensures frightened children or women still traumatized by rape will understand their legal rights and be able to tell their story in a safe environment. No child, mother, or family member should face deportation to life-threatening dangers without being able to speak to and receive legal counsel. Each asylum seeker who comes to our shores and borders presents an opportunity for our nation to demonstrate its continuing commitment and leadership to humanitarian protection.

AILA's Recommendations on Legal Standards and Protections for Children, Families and Other Border Arrivals

- **Ensure that the best interest of each child is prioritized:** The primary concern of the Administration must be the best interest of the child. To prevent child trafficking and abuse from occurring in the future, HHS should strengthen its placement processing and family reunification procedures. HHS should engage in more thorough and stringent processes before releasing children to sponsors, including extensive background checks and fingerprinting of sponsors, and HHS also needs to ensure better post-release follow up for each child, to include home visits. HHS should be provided the resources necessary to accomplish these and other goals, which will ensure the best interest of each child is prioritized.
- **Enhance TVPRA protections for children:** The existing legal standards protecting unaccompanied children, principally embodied in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) and the *Flores Settlement Agreement*, are designed to ensure that child victims of trafficking and persecution are not returned to life-threatening dangers. Congress should not scale back these protections for vulnerable children.

In addition, the standards of care, screening and protection for Mexican children should be brought on par with the treatment accorded to unaccompanied children from other countries

AILA National Office

1331 G Street NW, Suite 300, Washington, DC 20005
Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

that are not contiguous with the United States. Mexican children are treated differently under the TVPRA and face nearly automatic repatriation, with limited screening for relief, without the advice of counsel. Their deportation decisions are not made by immigration judges, but by CBP officers and agents. All unaccompanied children should be screened by a professional with training in child welfare, trauma, counseling, and international humanitarian and immigration law, and should appear in removal proceedings before an immigration judge.

- **End the policies of fast-track deportations:** Summary removal procedures, such as expedited removal or pre-hearing voluntary departure, should never be used for children, families or other vulnerable populations. Every individual facing deportation should have the opportunity to appear before an immigration judge in removal proceedings.
- **Strengthen support for immigration courts:** The Department of Justice Executive Office for Immigration Review (EOIR) should be funded to hire enough judges and staff so it can provide prompt hearings without compromising standards of due process and fairness. With about 470,000 cases in the current EOIR backlog, scheduling delays are a leading reason cases cannot move forward promptly. Under no circumstances should pressure be placed on immigration judges to handle cases at a faster rate by denying legitimate requests for continuances.
- **Affirm the fundamental right to counsel:** No one should face deportation alone. But unfortunately, most still do. The government should create policies that promote and respect the role of counsel in every phase of the proceeding, and should provide counsel for individuals in removal proceedings when they cannot afford a private attorney. The lack of counsel compounds the vulnerability of children, families, and other vulnerable individuals as they move through our nation's complicated removal system.
- **Fully fund the Legal Orientation Program (LOP):** Know-your-rights and legal screening programs should be sufficiently funded to ensure that every child and adult receives the benefits of these programs. Although not a substitute for legal representation, these programs are the only opportunity for most individuals to obtain information about their rights and responsibilities under the law, information vital for them to be able to make informed decisions about how to proceed. Research shows that EOIR's LOP participants move through the immigration court process an average of 12 days faster than detainees who do not have access to LOP, resulting in significant savings in court and detention costs.
- **Expand the use of trained asylum officers:** The Asylum Division of United States Citizenship and Immigration Services (USCIS) should be funded to hire more asylum officers to ensure prompt adjudications of asylum applications. Asylum officers have better training than CBP and Immigration and Customs Enforcement (ICE) officers in reviewing the petitions of vulnerable individuals. Currently, the Asylum Division has a substantial backlog in asylum applications, and increasing its capacity would improve overall efficiency in the process.
- **Improve the interviewing and screening of vulnerable individuals:** Research demonstrates that Border Patrol screenings fail to protect individuals who have legitimate fears of returning home. In 2014, AILA and other organizations submitted a complaint to the Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL) citing many case

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Phone: 202.507.7600 | Fax: 202.783.7853 | www.aila.org

examples of individuals in whose cases CBP never asked about fear of return in the first place or ignored statements of fear.² In response, CRCL has opened an investigation. The current screening mechanisms are ineffective and often result in the return of asylum seekers to the hands of their traffickers and persecution. All unaccompanied children and other vulnerable individuals should be screened by professionals with training in trauma, counseling, and international humanitarian and immigration law.

Protocols for screening unaccompanied children could be improved upon by adopting best practices from the criminal justice and child welfare fields which have developed comprehensive protocols for rape, sexual assault and child abuse cases. These criminal justice and child abuse practices are designed to ensure that complainant victims are given adequate time to report such incidents given the trauma victims suffer and the need for time to recover emotionally and physically. Interviews should be done in a safe setting and manner that minimizes the likelihood of re-traumatizing the victim.

As Congress examines the recent surge in migrants along our southwestern border, AILA urges elected leaders to ensure that our laws and practices continue to uphold our commitment to protect those who have escaped danger and who still face danger if forced to return home. These values can be maintained even as we strive to secure our borders. Indeed, we cannot meaningfully protect this nation without defending these most sacred values.

² National Immigrant Justice Center et al., *Complaint re: inadequate U.S. Customs and Border Protection (CBP) screening practices block individuals fleeing persecution from access to the asylum process*, available at <http://www.aila.org/infonet/aila-nijc-and-others-file-crcl-complaint>.