

**Statement of
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**House Judiciary Committee
Hearing on "An Administration Made Disaster: The South Texas Border Surge
of Unaccompanied Alien Minors"**

June 25, 2014

Chairman Goodlatte, Ranking member Conyers, and members of the Judiciary Committee:

During the past few years, the United States has experienced a steady increase in arrivals of unaccompanied immigrant children at the southern border, primarily from El Salvador, Guatemala, and Honduras. The U.S. government, other governments in the region, non-governmental organizations (NGOs), and inter-governmental organizations are trying to understand why these children are coming and how to respond, process, and care for them upon arrival in the United States. As a national leader in immigration law and policy, Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for today's hearing on these complex issues. We offer this statement to articulate the urgent need to treat unaccompanied immigrant children as children first and foremost, and to ensure that they receive due process to address protection concerns.

NIJC is an NGO dedicated to safeguarding the rights of noncitizens. With offices in Chicago, Indiana, and Washington, D.C., NIJC advocates for immigrants, refugees, asylum seekers, and survivors of human trafficking through direct legal representation, policy reform, impact litigation, and public education. NIJC and its network of 1,500 *pro bono* attorneys provide legal representation to approximately 10,000 noncitizens annually, including thousands of unaccompanied children. NIJC is the largest legal service provider for unaccompanied children detained in Illinois, conducting weekly legal screenings and legal rights presentations, which provide an overview of the child's legal rights and responsibilities in the immigration system, at nine Chicago-area shelters.

NIJC has played a major role in advocating for reform of the immigration system, especially related to unaccompanied children and asylum seekers. NIJC co-convenes the Migrant Children's Defense Collaborative for legal service providers; actively participates in the Interagency Working Group on Unaccompanied Children, a periodic meeting of government agencies and NGOs; and, as part of Heartland Alliance, serves as the NGO co-chair of the U.S.-Mexico-Central America Working Committee on Unaccompanied Children, a gathering of legislators, policy makers, and advocates from the U.S., Mexico, and Central America. In addition to its expertise regarding unaccompanied children, NIJC was a founding member of the "Asylum Litigation Working Group" and regularly

participates in separate discussions of the “Asylum Working Group;” together, the groups focus on monitoring developments in and implementation of laws and policies that impact asylum seekers. NIJC’s years of experience advocating on behalf of children and asylum seekers, from both policy and direct services perspectives, and collaborating with colleagues domestically and internationally, gives it a unique perspective on the immigration system and its relationship to U.S. obligations under domestic and international laws.

The United States has a proud legacy of protecting people who have been persecuted. This country is a beacon of hope for people fleeing oppression and is a leading defender of human rights. The primary vehicles through which nation-states assumed legal duties towards refugees are the 1951 Convention Relating to the Status of Refugees (Refugee Convention)¹ and the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol).² These documents require nation-states to recognize as refugees anyone with a “well-founded fear” of persecution in their home countries, to accord refugees certain legal rights, and to refrain from returning them to countries where their safety would be threatened.³ The United States ratified the Refugee Protocol⁴ and in 1980, the United States enacted the Refugee Act to ensure compliance.⁵ Since the Refugee Act was passed, legal protections for refugees in the United States have been significantly weakened. Today, NIJC is extremely concerned that the protection needs of immigrant children, families, and others seeking asylum from Central America, as well as the push factors driving their flight, are being overlooked. In a misguided effort to attribute increased migration from Central America to a shift in U.S. immigration enforcement policies, the genuine violence and persecution from which these individuals flee has been ignored.

This testimony provides a brief assessment of the current influx of unaccompanied immigrant children from Central America and provides recommendations to ensure that children are provided due process protections that address their best interests and ensure they are not returned to face persecution, violence, or other forms of serious harm.

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS vol. 189, p. 137 [hereinafter “Refugee Convention”].

² UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS vol. 606, p. 267 [hereinafter “Refugee Protocol”].

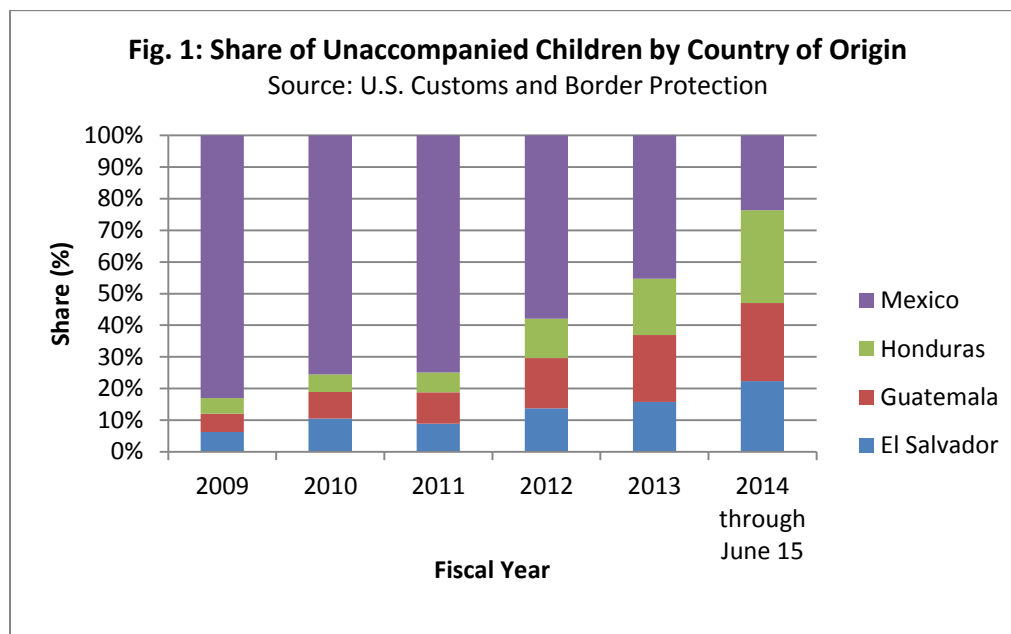
³ “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Refugee Convention, art. 33-1, 189 UNTS 150.

⁴ Although the United States did not sign the Refugee Convention, the Refugee Protocol includes by reference the rights and duties set forth in the Convention. Refugee Protocol, art. 2 (“The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to Refugees as hereinafter defined.”) The Refugee Protocol expanded these rights and duties to all refugees, whereas the Refugee Convention only applied to those displaced by the Second World War and its aftermath.

⁵ *INS v. Cardoza-Fonseca*, 480 U.S. 421, 433 (1987)(citing “the abundant evidence of an intent to conform the definition of ‘refugee’ and our asylum law to the United Nation's Protocol to which the United States has been bound since 1968”).

I. Forced Migration: Unaccompanied Children Flee Increasing Violence and Danger in Central America

While various individual factors are causing children to undertake a treacherous journey to the United States, growing violence and danger in their home countries is the primary reason the majority of the children are fleeing to the United States today. Most unaccompanied children apprehended at the border are from El Salvador, Guatemala, and Honduras (See Fig. 1), and several reports,⁶ including NIJC's January 2014 policy brief,⁷ have established that the majority of unaccompanied children flee these three countries due to pervasive violence, persecution, and abuse. Family reunification may play a role in the timing of a child's decision to migrate to the United States and to flee to the United States rather than another country; however, it is rarely the sole reason for a child's flight.



The United States is not the only country experiencing a dramatic increase in asylum seekers from Central America due to this violence. Together, Mexico, Panama, Nicaragua, Costa Rica, and Belize reported a 432 percent increase in the number of asylum applications filed by individuals from El

⁶ See e.g., Kids in Need of Defense (KIND)/Center for Gender and Refugee Studies (CGRS), *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, available at: <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>; U.S. Conference of Catholic Bishops (USCCB), *Mission to Central America: The Flight of Unaccompanied Children to the United States*, 2014, available at: <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>; Women's Refugee Commission, *Forced from Home: The Lost Boys and Girls of Central America*, 2012, available at: <http://womensrefugeecommission.org/forced-from-home-press-kit>.

⁷ Available at: <https://immigrantjustice.org/publications/policy-brief-unaccompanied-immigrant-children-vulnerable-children-face-insurmountable-o#.Uvqm723ehmc>.

Salvador, Guatemala, and Honduras in 2012.⁸ These numbers demonstrate that the current crisis is a regional problem caused by country conditions in the sending countries, rather than a perceived change in immigration policies in the United States.

Finally, rumors of broken borders or lax U.S. immigration policy are not the primary cause for the current influx. Since 2008, U.S. law has required that unaccompanied immigrant children be placed in the least restrictive setting that is in their best interest.⁹ Moreover, the increase in the migration of unaccompanied immigrant children to the United States began in October 2011, more than six months prior to the announcement of President Obama's Deferred Action for Childhood Arrivals (DACA) program.¹⁰ If a perceived change in immigration policy was fueling the current migration, there would be comparable numbers of immigrant children from other regional countries besides El Salvador, Guatemala, and Honduras, but this has not been the case.¹¹

Violence in the home countries and the failure of U.S. immigration policy to provide any other option for immigrant families in the United States to provide safety for their children is forcing children and their families to make the dangerous journey to the United States. The story of Jessica and Daniel (pseudonyms), NIJC's clients, illustrates the danger facing these children:

In 2013, Jessica, a young woman from Honduras, fled to the United States when she was 17 to seek protection. Throughout her childhood, her father regularly molested and raped her, and abused her mother. When Jessica was 10 years old, her mother went to the United States with her father to try to provide a better life for Jessica and her brother, but her parents separated when her father continued to abuse her mother. In 2012, a gang kidnapped Jessica and attempted to traffic her into prostitution. Jessica escaped but after she reported the gang to the police, the gang began targeting her. In early 2013, the gang grabbed her while she was walking to her home, burnt her with cigarettes and raped her. As a result of the rapes and abuse, Jessica began to cut herself and became suicidal. She fled to the United States to find safety and reunite with her mother. She now sees a therapist and is seeking asylum.

16 year-old Daniel lived with his mother in El Salvador in an area controlled by the MS-13 gang. In order to get to school, Daniel had to cross into a rival gang's territory, causing each gang to believe he was a member of the other gang. Gang members repeatedly threatened him with a gun and machetes for being in their territory. After they threatened him for the third time, Daniel stopped going to school out of fear for his life. When his mother learned of the threats, she told his father,

⁸ United Nations High Commissioner for Refugees (UNHCR), *Children on the Run*, 2014, available at: http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report.pdf, p. 4.

⁹ William Wilberforce Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, (P.L. 110-457), §235(c)(2).

¹⁰ United Nations High Commissioner for Refugees (UNHCR), *Children on the Run*, 2014, available at: <http://www.unhcrwashington.org/children/reports>, p. 4.

¹¹ UNHCR, 2014.

who lived in Texas. They made the difficult decision that Daniel needed to go to the United States for his safety. NIJC interviewed Daniel at a Chicago-area children's shelter before he was reunited with his father in Texas and determined he was eligible to apply for asylum. Daniel hopes to continue his studies without the threat of gang retaliation.

Daniel and Jessica are two of many children who may be eligible for legal protections in the United States. The Vera Institute and the U.N. High Commissioner for Refugees (UNHCR) have determined that between 40 percent and 58 percent of the unaccompanied children currently fleeing to the United States from Central America and Mexico may be eligible for some form of protection.¹²

Unaccompanied children face insurmountable challenges in pursuing legal protections in the United States. Like all immigrants, children in the immigration system do not receive government-appointed counsel. Without an attorney, unaccompanied children struggle to navigate the complicated U.S. immigration system alone and experience a denial of due process.

The U.S. asylum system is complex and a successful asylum application requires considerable resources. An asylum seeker must gather country condition reports, primary documentary evidence, affidavits from witnesses in their home country, and medical and psychological evaluations. The same holds true for those compiling documentation to support applications for U visas for survivors of crime, T visas for survivors of trafficking, and petitions for Special Immigrant Juvenile Status (SIJS) for certain children who have been abused, abandoned, or neglected. Government data and leading academic studies consistently show that detention and legal representation are significant factors in determining if a noncitizen is granted asylum or another form of relief. One landmark academic study showed that legal representation in immigration court is the most important factor affecting the outcome of an asylum application, with asylum grant rates nearly three times higher for those who have an attorney.¹³ Without legal counsel, it is virtually impossible for a child to effectively understand and navigate these complex processes in the face of the threat of deportation. NIJC's clients, Jessica and Roxana (pseudonyms), were able to obtain relief in the United States with assistance from NIJC's *pro bono* attorneys:

Jessica and Roxana are 11- and 14-year old sisters from El Salvador. When they were very small, their parents came to the United States hoping to provide a better life for them and left them in the care of their grandfather. Unbeknownst to the parents, the grandfather neglected and abused the girls until they eventually ran away to live on the streets. With the help of another family member, Jessica and Roxana fled to the

¹² UNHCR 2014 and Byrne, O. & E. Miller, *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*, Vera Institute of Justice, Mar. 2012, available at: <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

¹³ Ramji-Nogales, Jaya, et. al., "Refugee Roulette: Disparities in Asylum Adjudication," *Stanford Law Review*, Vol. 60, Issue 2, p. 340, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=983946.

United States. DHS apprehended them at the border, placed them in removal proceedings, and then transferred them into the custody of the Office of Refugee Resettlement (ORR) until they could be released to their parents in Indiana. Through NIJC, Jessica and Roxana were able to obtain pro bono attorneys to help them understand the immigration process and to identify any potential relief. At their hearing in the Chicago Immigration Court, the immigration judge decided to administratively close Jessica and Roxana's cases, so they can remain with their parents and begin to heal from the abuse they have suffered.

Without representation, these young girls would have been unable to navigate the immigration court system at the risk of deportation to a country where they faced abuse and neglect.

II. **Response to this Migration Crisis: Due Process Protections for Immigrant Children in the United States**

Although the influx of unaccompanied children presents a myriad of challenges, NIJC draws upon its depth of experience representing immigrants for more than 30 years to make the following four priority recommendations to improve the due process protections these children desperately need.

1. **Provide appointed counsel for unaccompanied immigrant children**

Providing legal counsel to unaccompanied children would not only ensure their due process protections, but would also help make immigration court proceedings more efficient and cost-effective. Studies demonstrate that when people in immigration court know their rights and understand the process, they seek fewer continuances while they try and identify counsel and judges spend significantly less time explaining complex immigration laws and procedures.¹⁴ At a time when the immigration court system is under-resourced and significantly backlogged, ensuring immigrant children have access to representation will help prevent the court system from becoming even more overwhelmed.

NIJC welcomes the recent creation of “justice AmeriCorps,” a pilot program to provide 100 attorneys and paralegals to unaccompanied children. The program is a partnership between the Corporation for National and Community Service (CNCS), which operates the AmeriCorps national service program, and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR).¹⁵ This initiative is a step in the right direction, but given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant

¹⁴ Semple, K. “Public Defender System for Immigrants Facing Deportation Would Pay for Itself, Study Says.” *New York Times*, May 29, 2014, http://www.nytimes.com/2014/05/30/nyregion/study-favors-free-counsel-to-navigate-deportation.html?_r=1.

¹⁵ Corporation for National & Community Service, “justice AmeriCorps Legal Services for Unaccompanied Children,” <http://www.nationalservice.gov/build-your-capacity/grants/funding-opportunities/2014/justice-ameri-corps-legal-services>.

children remains. A clear mandate from Congress and additional appropriations are needed to fund universal appointment of counsel for all unaccompanied children in immigration proceedings. This week, Representatives Hakeem Jeffries (D-NY), Karen Bass (D-CA), Lucille Roybal-Allard (D-CA), and Judy Chu (D-CA) announced the introduction of the Vulnerable Immigrant Voice Act of 2014 (VIVA), which provides appointed counsel for all unaccompanied immigrant children and individuals with a serious mental illness.¹⁶ Likewise, the Senate's immigration bill, S. 744,¹⁷ and its House counterpart, H.R. 15,¹⁸ both included provisions of counsel for unaccompanied children and other vulnerable immigrant populations in immigration proceedings. NIJC urges immediate consideration of these bills by the U.S. House of Representatives, which is long overdue.

2. Unaccompanied children must remain exempt from the expedited removal process

Unaccompanied immigrant children are not currently subject to expedited removal, the process by which adult asylum seekers are screened at the border for protection concerns prior to a rapid return to the country of origin.¹⁹ However, a recent White House “fact sheet” regarding unaccompanied children from Central America²⁰ announced the “surging of government enforcement resources to increase our capacity to detain individuals and adults who bring their children with them and to handle immigration court hearings—in cases where hearings are necessary—as quickly and efficiently as possible...” This language is extremely alarming and any suggestion that unaccompanied children could be subject to expedited removal procedures must be immediately clarified. Without robust safeguards in place, the United States risks violating international and domestic law by returning children with *bona fide* asylum claims to life-threatening situations.

Expedited processing makes it extremely difficult for child victims of violence and trauma, and their family members, to effectively make a claim for asylum or other protections under U.S. law. Like all asylum seekers, it is difficult for immigrant children who have suffered abuse in their home countries and during their journey to the United States to overcome the mental and emotional impact of that harm and discuss their fears with a stranger. It is also extremely difficult for all asylum seekers, but particularly child asylum seekers, to understand how to request asylum at the border and articulate and support a claim for protection. Moreover, the accelerated nature of expedited

¹⁶ Office of Congressman Hakeem Jeffries, “Rep. Hakeem Jeffries and House Members Introduce Legislation to Provide Legal Representation of Unaccompanied Minors,” Jun. 23, 2014, <http://jeffries.house.gov/news%20alert>.

¹⁷ See section 3502, available at: <https://beta.congress.gov/bill/113th-congress/senate-bill/744>.

¹⁸ See section 3502, available at: <http://thomas.loc.gov/cgi-bin/query/F?c113:1:/temp/~c1135nICgi:e812160>.

¹⁹ Section 235 of the TVPRA made procedural and substantive changes to immigration legal relief for unaccompanied immigrant children seeking relief from removal, however, section 235(b)(2) of the TVPRA limits the rights of unaccompanied immigrant children from contiguous countries (i.e., Mexico and Canada). While unaccompanied immigrant children from non-contiguous countries are immediately transferred to the custody of Health and Human Services (HHS) and placed in formal removal proceedings, unaccompanied immigrant children from *contiguous* countries are screened by Customs and Border Protection (CBP) for trafficking concerns or intentions to seek asylum and otherwise expeditiously returned to their country of origin.

²⁰ White House, “Fact Sheet: Unaccompanied Children from Central America,” Jun. 20, 2014, <http://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america>.

processing in remote locations along the border makes it impossible for a child to obtain legal counsel during this process.

Children who have suffered and fear persecution in their home countries are particularly vulnerable after their apprehension at the border. Many have been trafficked, exploited, and coerced in their home country and on their journey to the United States. The expedited removal process raises due process concerns for all asylum seekers, but as recognized by our law, it is particularly inappropriate for unaccompanied immigrant children. NIJC urges that our law protect all unaccompanied children apprehended at the border by exempting them from the expedited removal process.

3. Provide sufficient resources for immigration courts and specialized training for immigration judges working with children

Because immigration court funding has not kept pace with enforcement funding, the immigration court system operates with extensive delays and a backlog of over 366,000 pending cases nationwide.²¹ For example, the Chicago Immigration Court, the fourth most backlogged immigration court in the U.S., regularly schedules hearings for 2016 and beyond. The administration's current plan to address the influx of unaccompanied immigrant children does nothing to help the courts keep up with their growing caseload. Additional funding is needed to hire additional immigration judges, language specialists, legal technicians, clerks, and legal staff who work on cases appealed to the EOIR Board of Immigration Appeals. Providing appropriate staffing will help ensure that children move efficiently through the system. Although the House of Representatives voted to increase EOIR funding for fiscal year 2015 (FY 15),²² it falls short of the White House budget request for FY 15²³ and the amount needed to meaningfully address court delays.

In addition, EOIR should provide immigration judges with specialized, ongoing training on child development, childhood trauma and its effects, forms of relief available to children, and best practices to communicate with children. While some immigration judges make accommodations to reassure children in court, such as wearing normal attire rather than judicial robes, other immigration judges take no such steps. Current internal guidance also does not require that immigration judges explain possible relief to *pro se* unaccompanied children or ask them questions to determine relief eligibility. As a result, *pro se* unaccompanied immigrant children may have no opportunity to assert their eligibility for immigration relief during immigration proceedings and may be so frightened that they are unable to express the reasons they fear returning to their home country or articulate the

²¹ TRAC Immigration, Immigration Court Backlog Tool, Syracuse University, available at: http://trac.syr.edu/phptools/immigration/court_backlog/.

²² H.R. 4660, "The FY 2015 Commerce, Justice, Science Appropriations Act" available at: <https://beta.congress.gov/bill/113th-congress/house-bill/4660?q=%7B%22search%22%3A%5B%22hr4660%22%5D%7D>.

²³ FY 2015 Congressional Budget Submission, p. 22, available at: <http://www.justice.gov/jmd/2015justification/pdf/ara-justification.pdf>.

trauma experienced in transit. Without appointed counsel, it becomes particularly important for immigration judges and courts to take into consideration the unique needs and vulnerabilities of children.

4. The best interests of the child must be protected

The best interests of the child should be a central component of all U.S. policies addressing unaccompanied immigrant children, including assessment of a claim for refugee status, asylum, or any other form of protection. Under current law, DHS has authority to exercise prosecutorial discretion to consider the best interests of the child when making enforcement-related decisions pertaining to unaccompanied immigrant children, including issuance of a charging document to commence immigration proceedings, administrative closure or termination of a removal case, or conceding a noncitizen's eligibility for immigration relief. Congress should provide explicit legislative authority to protect the best interests of the child in immigration enforcement and benefit decision-making, such as the amendment ("Landrieu 1340") to S. 744 offered by Senators Mary Landrieu (D-LA), Al Franken (D-MN), and Mazie Hirono (D-HI), which requires all federal agencies and federal courts to consider the best interests of the child in all decisions involving unaccompanied immigrant children.²⁴

III. Conclusion

The 1980 Refugee Act provides critical due process protections for individuals fleeing persecution and children are no exception to these protections. As a nation committed to human rights, the United States must uphold its commitment to protecting the persecuted, including the youngest and most vulnerable. Any solution to this humanitarian crisis must be comprehensive and address the root causes of migration in Central America, the natural desire for family members to reunite, and our obligations to protect those fleeing persecution. Unaccompanied immigrant children have escaped life-threatening violence. We must ensure that our laws treat children like children and do not send them back into harm's way.

²⁴ First Focus, "Senate Immigration Floor Amendments At-a-Glance," <http://www.ffcampaignforchildren.org/resources/documents-and-publications/fact-sheets/senate-immigration-floor-amendments-at-a-glance>.