

**Statement of
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**Senate Appropriations Committee
Hearing on "Review of the President's Emergency Supplemental Request for
Unaccompanied Children and Related Matters"**

July 10, 2014

Chairman Mikulski, Ranking member Shelby, and members of the Senate Appropriations Committee:

In recent 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 provide adequate funding for the shelter and processing of unaccompanied immigrant children, to ensure that due process protections are not compromised in a time of crisis and to address the root causes of children fleeing their home countries.

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.

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.

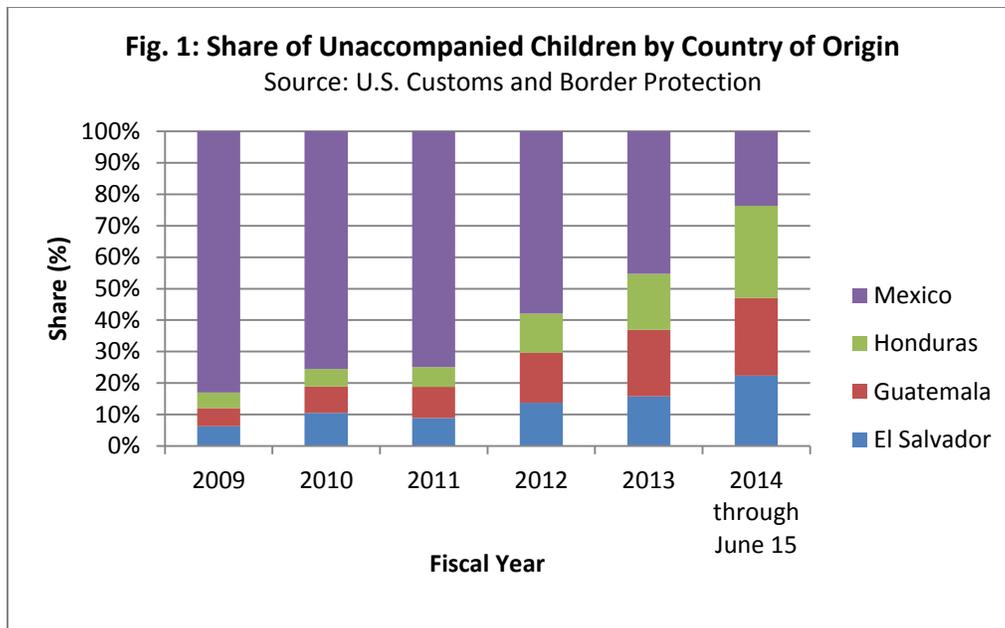
This testimony provides a brief assessment of the current influx of unaccompanied immigrant children from Central America as well as the emergency supplemental request, and provides recommendations to ensure that children are provided due process protections that address their best interests and ensure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

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,¹ including NIJC’s January 2014 policy brief,² 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.

¹ 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>.

² Available at: <https://immigrantjustice.org/publications/policy-brief-unaccompanied-immigrant-children-vulnerable-children-face-insurmountable-o#.Uvqm723ehmc>.



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 712 percent increase in the number of asylum applications filed by individuals from El Salvador, Guatemala, and Honduras from 2008 to 2013.³ 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.⁴ 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.⁵ 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.⁶

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:

³ United Nations High Commissioner for Refugees (UNHCR), <http://unhcrwashington.org/children>.

⁴ William Wilberforce Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, (P.L. 110-457), §235(c)(2).

⁵ United Nations High Commissioner for Refugees (UNHCR), *Children on the Run*, 2014, available at: <http://www.unhcrwashington.org/children/reports>, p. 4.

⁶ UNHCR, 2014.

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, 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.⁷

II. Fair and Efficient Hearings: The Importance of Legal Counsel for Unaccompanied Children

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,

⁷ 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>.

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.⁸ 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, Maria and Roxana (pseudonyms), were able to obtain relief in the United States with assistance from NIJC's *pro bono* attorneys:

Maria 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 United States. The U.S. Department of Homeland Security (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.

III. Emergency Supplemental Request: Misguided Allocations for Enforcement and Deterrence

To respond to the influx of unaccompanied immigrant children and young families arriving at the United States border, the administration has requested \$3.7 billion in supplemental funding, much of which prioritizes enforcement in a misguided attempt to achieve deterrence for individuals making the journey. While allocations of \$1.8 billion for the Department of Health and Human Services (HHS) to care for unaccompanied immigrant children and \$116 million for U.S. Immigration and Customs Enforcement (ICE) to transport unaccompanied children from overcrowded U.S. Customs

⁸ 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.

and Border Protection stations at the border to more child-appropriate HHS facilities are urgently needed, NIJC is alarmed by the request for \$879 million for the detention and removal of families. An increase in family detention beds is a significant step in the wrong direction, ignoring the government's appalling track record in detaining families and years of progress moving away from incarceration and towards more cost-efficient and effective alternatives to detention. Whereas detention can cost an average of \$159 per day, alternatives – such as telephonic or in-person reporting, community-based programs, and GPS ankle bracelets – can range from 17 cents to \$17 per day.⁹

NIJC strongly supports the request of \$45.4 million for Department of Justice (DOJ) to hire approximately 40 additional immigration judge teams, given the lengthy backlogs that plague immigration courts across the country. For example, the Chicago Immigration Court, one of the most backlogged immigration courts in the country, regularly schedules hearings for 2016 and beyond. The immigration court system has long been under-funded, particularly in light of increases in enforcement funding that have channeled more noncitizens into the removal system. Other requests for DOJ in the emergency supplemental for legal orientation programs (\$2.5 million) and legal representation for children (\$15 million) are encouraging but grossly underestimate the overwhelming need for such services.

NIJC urges the administration to redirect funding requested for DHS (apart from much-needed transportation allocations) to increased legal services for unaccompanied immigrant children, more robust use of alternatives to detention, additional immigration judge teams to improve the adjudicatory process, and universal legal orientation programs for detained individuals and custodians of unaccompanied children to ensure full, fair, and efficient due process. In addition, to effectively address root causes and make it possible for children to safely remain in their home countries, the Department of State must be adequately funded to address the conditions of violence and extreme poverty that force many to flee and promote safe repatriation and reintegration programs.

IV. Retaining Critical Due Process Protections for Children in Times of Crisis: The Importance of the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA)

NIJC is alarmed by calls for additional legislative authority to expedite screenings and deportations of unaccompanied children fleeing El Salvador, Guatemala, and Honduras. The TVPRA, which passed the Senate and House by unanimous consent and was signed into law by President George W. Bush in December 2008, provides critical protections for immigrant children and child refugees that should not be withdrawn. The law was initiated as a response to years of insufficient screenings

⁹ National Immigration Forum, "The Math of Immigration Detention," Aug. 2013, <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

of unaccompanied children at the border, resulting in the return of vulnerable children to situations of violence, abuse, and persecution from which they fled. The TVPRA provides child-sensitive procedures for children in immigration custody and facing removal. In this challenging time, with unprecedented numbers of vulnerable children arriving at our southern border, the protections ensured by the TVPRA should be increased rather than eviscerated.

Specifically, the TVPRA requires that unaccompanied children from non-contiguous countries be placed in removal proceedings before an immigration court rather than subjected to a hurried screening and repatriation process akin to expedited removal. This due process protection is critical to ensure that children who have been, or fear being, abused, tortured, and/or persecuted are not summarily removed to places where they face harm. Under the TVPRA, children have the opportunity to receive full due process protections in an immigration court proceeding. They are also afforded time to recover from their journeys and past trauma, receive legal orientation, seek counsel, and gather evidence in support of their cases.

The expedited process currently in place for Mexican children (who receive reduced TVPRA protections) requires them to immediately reveal their protection claims to the very people who have apprehended and detained them without access to attorneys or any form of counseling. This procedure should not be applied to children from non-contiguous countries and, indeed, should be terminated altogether so that all unaccompanied children receive a full and fair hearing when facing deportation. NIJC's complaint to the DHS Office of Civil Rights and Civil Liberties (OCRCL) and Office of the Inspector General (OIG) on behalf of 116 unaccompanied children abused and mistreated while in the custody of U.S. Customs and Border Protection (CBP) demonstrates that CBP is not the appropriate agency to screen children for relief.¹⁰ Approximately one in four children reported some form of physical abuse, including sexual assault, beatings, and the use of stress positions by CBP officials. More than half of the children reported various forms of verbal abuse, including racially- and sexually-charged comments and death threats. One 16-year-old girl reported that an immigration official verbally abused her and accused her of lying when she tried to explain the threats she faced in her home country. These appalling conditions do not support CBP assuming a larger role in screening children for relief.

Moreover, the current expedited screening procedures for Mexican children do not screen them for eligibility for Special Immigrant Juvenile Status (SIJS), a form of protection for children who have been abused, abandoned or neglected by their parents or guardians. If children are not provided with access to the immigration court system, they will not have the opportunity to seek the protection they need and merit under the law.

Cynthia grew up in Guatemala with an abusive father who physically and verbally abused her throughout her childhood for any perceived disobedience, including wearing pants and getting the house wet after coming in

¹⁰ Available at:

<http://www.immigrantjustice.org/sites/immigrantjustice.org/files/FINAL%20DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs%202014%2006%2011.pdf>.

from the rain. Her mother was unable to protect her because she too was subject to abuse. Cynthia fled to the United States to escape her father's abuse and find safety and security. It is very difficult for Cynthia to discuss her father's abuse and it took numerous meetings with trained legal staff before she felt comfortable revealing this information. Had Cynthia been subjected to expedited screening at the border by CBP officers, she would not have been able to reveal this information. Even if she had notified CBP officers of her abusive childhood, she could have been repatriated because the initial screening does not assess children's eligibility for SIJS protection.

The TVPRA also grants initial jurisdiction over unaccompanied children's asylum claims to the United States Citizenship and Immigration Services (USCIS) Asylum Office. This allows children to present their asylum claims in a non-adversarial setting before an asylum office who is specially trained on interviewing children and to deal with survivors of trauma. This mechanism makes it possible for children to fully reveal the nature of their claims and also increases immigration court efficiency by resolving some cases outside of the courtroom. This means judges are not required to hold a full asylum trial and can terminate proceedings upon approval by USCIS.

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 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, abuse, and trafficking in their home countries are particularly vulnerable after their apprehension at the border. Many have been trafficked, exploited, and coerced in their home countries and on their journey to the United States. The expedited screening process currently utilized with Mexican children raises due process concerns for all immigrants fleeing harm, 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 an expedited screening process at the border. Efforts underway to roll back the TVPRA are misguided and threaten to compromise the rights of children, placing them at risk of experiencing great harm.

V. **Conclusion**

International law and domestic laws that implement those legal obligations provide 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.