



July 18, 2014

A Humanitarian Call to Action: Unaccompanied Alien Children at the Southwest Border

The American Bar Association (ABA) through its Commission on Immigration (COI) is gravely concerned about the situation on the southwest border. This year there has been a dramatic increase in the number of adults, families and unaccompanied children from Central America crossing into Texas with some literally turning themselves over to Border Patrol Agents. We have all seen the images of children and families jailed in terrible conditions at Customs and Border Protection processing stations, held for days in freezing cold cells, sleeping on cement floors and receiving inadequate food, bedding and sanitation. These same individuals each face removal proceedings, either through immediate expedited removal proceedings or by the issuance of a charging document in immigration court. The ABA has worked on these issues for several years and continues to take action to address the current needs.

1. Background:

Who is an Unaccompanied Alien Child (UAC)?

The Homeland Security Act of 2002 first introduced the term “unaccompanied alien child” into immigration law parlance. An unaccompanied alien child is defined as someone who has (A) no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) who has no parent or legal guardian in the United States; or, no parent or legal guardian in the United States available to provide care and physical custody.”¹

The Homeland Security Act also transferred the responsibility for care and custody of these children from the (former) enforcement-oriented Immigration and Naturalization Service to the welfare-based U.S. Department of Health and Human Services, Office of Refugee Resettlement.

Current Situation with Unaccompanied Children at the Border

The Department of Homeland Security reports that 57,525 unaccompanied children have been processed by U.S. Customs and Border Protection in the United States since October 2013, a 106% increase over the entire previous Fiscal Year.² Only two years earlier, in 2011, an average of 7,000 to 8,000 unaccompanied children were detained and held in shelters annually.³ There has clearly been a marked increase over the past two years, and especially in the last few months. Statistics from FY2014 show these children are mostly from El Salvador (23%), Guatemala (24%) , Honduras (29%) and Mexico

¹ 6 U.S.C. § 279(g).

² See, U.S. Customs and Border Protection, Southwest Border Unaccompanied Alien Children, available [here](#):

³ See, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, May 2014, available [here](#):

(22%) and range in age from infants to 17 years.⁴ Historically, the majority of these children have been between the ages of 15 and 17 and about three quarters of them have been boys; more recently, however, the number of younger children and girls has risen steadily.

Once children are detected by Border Patrol agents they are transported to a Customs and Border Protection (CBP) processing station and held for days in cells during which they are processed. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that these children be held no longer than 72 hours but in practice they are often held much longer, up to 15 days. CBP communicates with the Department of Health and Human Services, Office of Refugee Resettlement (DHHS, ORR) to find a placement for the child. Once a placement is confirmed, officers from Immigration and Customs Enforcement (ICE) transport the children from CBP to the ORR shelters. At the shelters the children are finally able to shower, eat hot food, make phone calls and receive adequate medical care, counseling and legal services. Legal service providers meet with the children and provide a “Know Your Rights” presentation and perform individual screenings. The screenings are used to make referrals to pro bono attorneys for children who are eligible for legal relief. The TVPRA requires that children from non-contiguous countries be placed in removal proceedings before an Immigration Judge, have the right to apply for legal relief and receive counsel “to the greatest extent practicable.” These provisions are currently being considered for amendment to treat children from non-contiguous countries identically to those from contiguous countries. Children from contiguous countries (Mexico and Canada) can be immediately returned to their countries after a cursory screening by a uniformed Border Patrol agent. A recent confidential UNHCR report leaked to the media found these Border Patrol screenings to be woefully inadequate and concluded that they fail to protect Mexican children.⁵ Furthermore, the UNHCR concluded that Border Patrol agents should not be charged with screening children for risks of trafficking, persecution or voluntariness of return.⁶

Historically, about 85% of the unaccompanied children have been reunified with approved sponsors within an average of 35 days.⁷ With the current surge of migrants and refugees at the southwest border, accelerated reunification, in as little as 7 days, without legal screenings, is occurring. Children are released to sponsors within the United States who may be documented or undocumented. Some sponsors are the parents of these children and others are extended family members or family friends. These children are in removal proceedings and have no right to appointed counsel or *guardians ad litem*. They are reunifying in cities and states all over the United States. There is no one agency coordinating their legal representation although a few non-profit groups run pro bono projects in some of the major cities. Legal representation and access to and by counsel are paramount issues of concern for the Commission.

The Administration is adamant about making efforts to stem the flow of unaccompanied children and is considering different options, which include amending TVPRA to treat Central American children like

⁴ See, U.S. Customs and Border Protection, Southwest Border Unaccompanied Alien Children, available [here](#):

⁵ Vox, The Process Congress Wants to Use for Child Migrants is a Disaster, 7/15/14, available [here](#):

⁶ *Id.*

⁷ See, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, Fact Sheet, May 2014, available [here](#):

Mexican children. This would mean simply send them back with nothing more than the cursory CBP screening. The other proposal is potentially limiting the current definition of UAC. The Administration has already changed its manner of treating increasing numbers of families entering the United States, specifically women with children. Previously, these families would be released on their own recognizance, but the government has recently opened a new family detention facility at a federal law enforcement training center in Artesia, New Mexico, situated in a very remote and difficult-to-access area of the state. These families are placed in expedited removal proceedings with no right to bond. The detainees, mothers and children, are only scheduled to appear before the immigration judge after a “credible fear” interview with an Asylum Officer (if they express fear of return). If they pass the “credible fear” interview they will have the opportunity to apply for political asylum, although with no right to appointed counsel. ICE has already started removing detainee mothers and children held in this facility; and as of today, it is reported that of 80 detainees who appeared before an immigration judge via videoconference, only one was permitted to remain in the United States and 79 have been ordered removed this week. Hearings are held by videoconference presided over by a judge in Virginia. The government is represented by counsel located in Denver, Colorado. In its 2004 UAC Custody Standards, the ABA expressly opposed video-conference hearings involving children.

In order to deal with the dramatic increase in numbers of Central Americans at the border, the Administration among other things, has submitted a \$3.7 billion emergency supplemental appropriations request to Congress that would provide significant additional resources for law enforcement efforts, including family detention centers, and the care and custody of unaccompanied children. The request also contains \$64 million for the Department of Justice to: hire approximately 40 additional temporary immigration judge teams; expand the legal orientation program; provide direct legal representation services to some children; and hire additional immigration litigation attorneys. The House and Senate are considering the request, but there is significant disagreement about its provisions and it is uncertain when or whether a supplemental appropriations bill may be passed.

Reasons for the Recent Exodus

The vast majority of the children who comprise the recent surge in numbers come from three countries: El Salvador, Honduras and Guatemala, a region in Central America known as the “Northern Triangle.” In contrast, the number of children entering from Mexico has remained relatively constant over the past several years. Why are so many people leaving Central America now and for what reasons? The answers are complicated and varied. There is no doubt that the extraordinarily high incidence of violence from gangs and drug cartels is a major push factor.⁸ Since 1989 the ABA has operated a pro bono project on the Texas border called ProBAR, the South Texas Pro Bono Asylum Representation Project. Many of the children represented by ProBAR attorneys have been threatened by the gangs and are ordered to join or pay the ultimate price. Others have been extorted and ordered to pay large sums of money or they or their family members will be harmed or killed. Young girls are claimed as “girlfriends” by gang members and told they will be killed if they don’t surrender. Children describe how gang members wait for them outside of their schools in order to recruit new members and/or charge fees. Entire neighborhoods are

⁸ Frances Robles, “Fleeing Gangs, Children Head to U.S. Border,” *NY Times*, July 9, 2014, available [here](#):

controlled by rival gangs and innocent families must pay a “war tax” or “rent” to the controlling gang. The authorities either cannot or will not control the gang violence and so the gangs have effectively gained control over large parts of these countries. While large numbers of children are targeted personally for gang violence, even those who have not, fear they will be targeted in the future. Other children describe being victims of domestic violence, trafficking, exploitation and neglect. There are very few safety nets for vulnerable children in Central America and traveling to the United States is perceived as one of the only ways to escape danger, violence and poverty.

These Central American countries all were impacted by civil wars in the 1980s and 1990s and continue to be plagued with insecurity, impunity and a weak and corrupt law enforcement system. Honduras has one of the highest murder rates in the world, 90 murders per 100,000 residents, as compared to 5 murders per 100,000 residents in the United States and 15 in Chicago.⁹ Honduras’s second largest city, San Pedro Sula, where many unaccompanied children come from, has been dubbed the “world’s murder capital” at 173 murders per 100,000 residents.¹⁰ Furthermore, economic conditions are dismal and the average salary for a professional is about \$150 a month. As a result of these conditions and natural disasters including Hurricane Mitch in 1998 and an earthquake in El Salvador in 2001, adults fled to the United States seeking safety, protection and employment and have remained in the U.S. for five, ten, fifteen years and more, working and sending money back home while their children are left behind, being raised by extended family members.

The failure of comprehensive immigration reform is a factor that has led to increased migration of children. Many parents who left their children behind continue to live in the United States without legal status. They hoped that they would be able to travel back to their countries legally and visit their children this year. The failed effort at immigration reform has caused them to lose hope and out of desperation some have paid smugglers upwards of \$6,000 to bring their children to the United States. Sometimes elderly caregivers in the home country can no longer properly care for the children or have passed away. In other cases the children decide on their own it is time to leave and insist on joining their mother or father in the United States. Some children leave their countries with the expectation of supporting their parents and siblings living in abject poverty back home; the families may even mortgage the only home or piece of land they have to raise the money for the child’s trip.

The fact that it has become easier and quicker to reunify with families is another factor that relates to the increase in numbers. Human smuggling is a lucrative business and smugglers are quick to recognize the patterns in reunification policies and use them to their advantage. They portray “release on recognizance” or “reunification” as a “permiso,” or “permit” to enter the United States, but that is only a temporary authorization to permit people to remain in the United States during the pendency of their removal proceedings. They have no right to work and no right to any permanent status. Some people follow through by appearing for their removal proceedings and others do not. There are very few options for people to remain legally in the United States when they enter without authorization. On the

⁹ Danny Vinik, “[Honduras’s Murder Rate is Six Times Worse Than Chicago’s. How Can We Send Children Back to That?](#)” New Republic, July 10, 2014, available [here](#):

¹⁰ *Id.*

other hand, the Immigration Court system is so severely backlogged and under-resourced that it often takes years to complete a case. Immigration Judges can carry a 2000+ annual case docket. Congress has continually funded increased enforcement efforts but has failed to increase resources needed to adequately adjudicate these cases in a timely and efficient manner. Currently, the adjudication system receives a paltry 2% of the resources dedicated to the national immigration enforcement budget.

Legal Relief: Refugee or Immigrant?

There has been much debate in the media about whether these individuals are refugees or simply migrants. A refugee is someone who is outside of his or her country of nationality and is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹¹ An immigrant generally migrates for economic, family or other reasons. This distinction makes a difference because someone who meets the definition of refugee qualifies to be granted asylum, but there is generally no legal relief for migrants who enter the country without authorization.

The UNHCR, in a recent report, found that 58% of the children interviewed in a 2013 study raised actual or potential legal protection concerns.¹² This signifies that more than half of the children have personal situations of danger, abuse or neglect that may make them eligible to apply for asylum or another form of relief such as the Special Immigrant Juvenile visa. This does not mean that 58% of the children will ultimately win legal relief. The U.S. does not always interpret our asylum laws as broadly as suggested by the UNHCR. It is difficult to win an asylum case, especially in the adversarial Immigration Court system (some children have the right to apply for asylum before the Asylum Office in a non-adversarial process). Many of the gang cases are ultimately denied by Immigration Judges and Courts of Appeal, finding that they do not meet the legal standard for asylum. Again, in order to qualify for asylum an applicant has to show that he or she suffered past persecution or has a well-founded fear of future persecution based on race, religion, nationality, political opinion or social group.¹³ If someone presents a fear that is not based on one of these five protected grounds, it will be denied, even if credible. That is essentially what happens with many of the gang-based cases, they are found credible, but the judges hold that the fear is not based on one of the five grounds.

Some advocates have called for the granting of Temporary Protected Status (TPS) for Central Americans who are in the United States without authorization. TPS is a status designated by the executive branch to authorize a temporary stay in the United States due to ongoing armed conflict, a natural disaster or other extraordinary conditions that temporarily prevent nationals from returning safely.¹⁴ This would be one way to relieve the courts of having to adjudicate the majority of these cases and give people the means to support themselves while they remain in the United States.

2. ABA Response: Past and Present

¹¹ 8 U.S.C. § 1101(a)(42)(A).

¹² See generally, United Nations High Commissioner for Refugees, Children on the Run (March 2014), available [here](#):

¹³ 8 U.S.C. § 1158(b)(1).

¹⁴ 8 U.S. C. § 1254a(b)(1).

ABA Background on Serving Immigrants and Asylum-Seekers on the Texas Border

In 1989, the ABA, in collaboration with the State Bar of Texas and the American Immigration Lawyers Association, created ProBAR, the South Texas Pro Bono Asylum Representation Project, in Harlingen, Texas. This effort arose out of a response to a similar crisis when there were over 5,000 Central American adults and families detained in South Texas fleeing from war-torn nations in Central America and seeking safety and protection in the United States. At that time, these organizations joined forces in order to recruit and train pro bono lawyers to represent detained Central American asylum-seekers in South Texas. Initially, the project was comprised of just one attorney and a volunteer paralegal. Today, ProBAR has almost 40 staff members in two offices in Harlingen, Texas, that focus on providing “Know Your Rights” presentations, legal screening services and pro bono representation to adults and unaccompanied children in detention throughout the Rio Grande Valley.

In 2013, ProBAR served 6,500 detained unaccompanied children and 3,200 detained adults. This year they expect those numbers to double, at least with regard to the children. In 2011, there were 369 beds for unaccompanied children in the Rio Grande Valley and each child would remain detained an average of 45 to 60 days. Today there are over 1,600 beds in South Texas, and children rotate in and out an average of every 7 to 30 days. As a result of such overwhelming numbers and constant turnover, it is much more difficult for ProBAR staff to serve these children in a satisfying and effective way. It is also much harder to keep track of them, refer them to pro bono services and create any type of lasting rapport. At least 85% of the children will be reunified with family or friends in the United States. They travel all over the United States in order to reunify and have no right to appointed counsel in the immigration court process. If they don’t return to immigration court when scheduled, they will receive an *in absentia* removal order. The five most common states for reunification are: Texas, California, New York, Florida and Virginia.

ABA Project Serving Immigrants and Asylum-Seekers on the California Border

In 2008, the ABA created the Immigrant Justice Project (IJP), a pro bono project located in San Diego, California. The mission of the IJP is to promote due process and access to justice at all levels of the immigration and appellate court system, through the provision of high-quality pro bono legal services for those in immigration proceedings in San Diego. The IJP serves both detained and non-detained individuals, and recruits, trains and mentors volunteer attorneys and law students to represent individual clients. They do not focus specifically on unaccompanied children, but do specialize in representing detainees with diminished mental capacity, asylum-seekers and others.

ABA Delegation to San Antonio, Texas

In response to the increasingly compelling humanitarian situation occurring at the southwest border, the COI has organized a tour for ABA leadership and Commission members of the Lackland Air Force Base in San Antonio, Texas, where 1,200 children are being held and processed for reunification. ABA President James R. Silkenat and President-Elect William Hubbard will join Commission Chair Christina Fiflis, COI Director Meredith Linsky and 15 others to visit this emergency facility as well as several traditional children’s shelters and the San Antonio Immigration Court. This tour will take place on July

29 and 30, 2014. We hope to be able to learn more about what is going on in Texas and determine how we can best collaborate to provide legal assistance to these children either through “Know Your Rights” presentations and screenings or by providing direct representation after they are released.

ProBAR KYR and Screening Video

The Commission, through our ProBAR project, is in the process of producing a training video for attorneys and paralegals who are serving these children in the initial detention setting. Currently there are 94 shelters and three large military bases where ORR holds children who are being processed for reunification: Fort Sill in Oklahoma, Lackland Air Force Base in San Antonio and Naval Base Ventura in Oxnard, California.¹⁵ As of June 18, 2014, there were 7,804 children in DHHS ORR custody with capacity to hold 8,416.¹⁶ The ProBAR staff has years of expertise in providing specialized “Know Your Rights” presentations and screening services to children. They will be producing this video in Texas and hope to have it available to the public by mid-August 2014.

ABA Advocacy Efforts

Additionally, the ABA is engaged in advocacy efforts with the Administration and Congress. The ABA has adopted a number of policies that address unaccompanied alien children.

In 2001, the ABA adopted a [policy](#) that urges: 1) government appointed counsel for unaccompanied children at all stages of immigration processes and proceedings; 2) creation within the Department of Justice of an office with child welfare expertise that would have an oversight role and ensure that children’s interests are respected at all times; 3) that children in immigration custody who cannot be released to family or other sponsors should be housed in family-like settings, and not detained in facilities with or for juvenile offenders.

In 2004, the ABA adopted the [Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States](#). These Standards were developed by the Commission on Immigration’s predecessor entity and cover myriad issues related to specific rights of child respondents, representation of children, and the standards for the custody, placement and care of unaccompanied alien children, rights of children in custody and adjudication of child claims.

Furthermore, on June 25th, 2014, President Silkenat submitted a statement to the Judiciary Committee of the U.S. House of Representatives regarding the surge of unaccompanied children. That statement can be found at:

http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalien_minors_t.authcheckdam.pdf

We are planning additional action in the coming weeks and months.

GPSolo/KIND Pro Bono Training Sessions

¹⁵ See, Intergovernmental Advisory, [Unaccompanied Children Summary](#), June 20, 2014 (showing capacity at the various emergency facilities: Lackland 1,200; Naval Base Ventura 300; Ft. Sill 600) (available from ABA COI).

¹⁶ *Id.*

A significant effort to support legal representation of unaccompanied minors was commenced in June, 2011 when the ABA Board of Governors authorized GPSolo Division to partner with Kids in Need of Defense (KIND), a private non-profit that helps provide competent and compassionate legal counsel to unaccompanied minors in the US immigration system. The ABA-KIND partnership has developed over the years, with the ABA providing training venues, on-line resource materials and a pool of volunteers, and KIND matching up trained volunteers with cases, mentors and guidance.

Since starting in 2011, the ABA-KIND partnership has training lawyers in numerous cities, during stand-alone meetings conducted by ABA GPSolo, Tort Trial and Insurance Practice Section and Business Law Section. The ABA-KIND partnership website is hosted by GPSolo but open to all and includes a free (open access) 2-hour CLE accredited webinar and 6 x ½ hour podcasts, along with written training materials: <http://www.americanbar.org/groups/gpsolo/initiatives/kind.html>. That site also has a short information video about KIND and a direct link to volunteer with KIND to take on a case. This partnership and more information from KIND is described in Laura Farber's January 2012 article for GPSolo Magazine, see:http://www.americanbar.org/publications/gp_solo/2012/january_february/chairs_corner_helping_kids_need_defense.html

3. How to Help Now

For ABA members and others who want to help now, there are a number of options:

Volunteer with or Donate to ProBAR in Harlingen, Texas or the IJP in San Diego, California

At this time, ProBAR can only accept volunteers who are fluent in Spanish, can commit to staying at least one month and are available to help screen children at one of the 15 shelters in the area. In order to contact ProBAR, e-mail the Director, Kimi Jackson at kimi.probar@gmail.com or the Manager of the Children's Project, Meghan Johnson at meghan.probar@gmail.com.

If you do not meet the criteria to volunteer, you may still support this work by making a contribution to ProBAR or the IJP through the ABA's Fund for Justice and Education at the following link:

<https://donate.americanbar.org/immigration>

Attend the ABA-KIND Trainings presented throughout the year in various cities across the country

Two in-person training and information sessions are planned at ABA meetings in the fall 2014. In Chicago, on Friday September 12 from 11 am-12:30 pm there will be a free CLE accredited KIND training and informational session at the Chicago Hyatt (part of the BLS stand-alone meeting, but no registration fee required to attend the KIND training); this session was timed to coincide with the Section Officers Conference fall conference and we are encouraging SOC meeting attendees to attend, learn about the project and adopt it as a pro bono project for their ABA entities. If you are interested please email Leslie Archer at the ABA BLS office so she can ensure sufficient seating (Leslie.Archer@americanbar.org).

In San Antonio, on Saturday, October 25, from 8:00 am-12:30 pm the ABA GPSolo Division will host an expanded KIND training and recruitment session at the San Antonio Hilton Palacio del Rio. That session is also free, open to all lawyers and law students and is CLE accredited. This expanded program will include a mock hearing, Immigration 101 and also a session on representing children as clients. If you are interested in attending the San Antonio KIND training session please email Dee Lee at the ABA GPSolo office (Dee.Lee@americanbar.org) so we can ensure sufficient seating.

It is anticipated that additional sessions will be conducted in 2015 at GPSolo and BLS meetings, and we hope other ABA entities will join the ABA-KIND partnership and host training sessions at their stand-alone meetings.

Volunteer or Work with Raices in San Antonio, Texas

Raices (Refugee and Immigrant Center for Education and Legal Services) is providing services to children detained in San Antonio and at the Lackland Air Force Base. They are currently seeking to hire several attorneys and paralegals on a short-term basis to provide direct services to children. You can find out more about Raices by going to their website at: <http://www.raicetexas.org/>

Volunteer with Catholic Charities in Oklahoma

Catholic Charities is just beginning to provide services at Fort Sill, a military base 85 miles South of Oklahoma City. If you are interested in volunteering with them, fill out a volunteer application at the following website: <http://helpkids.catholiccharitiesok.org/>

Donate Toward Social Service Efforts

If you would like to donate toward serving those who have been released you can check out the following websites of agencies that are providing support to newly arrived Central Americans in the Rio Grande Valley, the area where ProBAR is located.

South Texas Refugee Response
<http://www.southtexasrefugees.org/donate-here/>

La Posada Providencia, a shelter run by the Sisters of Divine Providence:
<http://lppshelter.org/>

The Sacred Heart Church in McAllen is serving released families:
<http://sacredheartchurch-mcallen.org/immigrant-assistance/>

Volunteer with one of the Pro Bono Agencies that Serves Released Children

Finally, lawyers can contact one of the following agencies that coordinate pro bono services for released children and offer to take a case:

KIND: Kids in Need of Defense: <http://www.supportkind.org/en/>

USCRI: U.S. Committee for Refugees and Immigrants: <http://www.refugees.org/>

Share Your Ideas

The Commission is interested in working collaboratively with ABA entities and other stakeholders please feel free to contact us with your ideas and plans to address this complicated and compelling situation.

For more information, contact:

Christina Fiflis, Chair, ABA Commission on Immigration, christinafiflis@me.com

Meredith Linsky, Director, ABA Commission on Immigration, Meredith.Linsky@americanbar.org, 202-662-1006.