



Statement for the Record by Kids in Need of Defense (KIND)

“The Biden Border Crisis: Exploitation of Unaccompanied Alien Children”

U.S. House Judiciary Subcommittee on Immigration Integrity, Security, and Enforcement

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Kids in Need of Defense (KIND) is the leading U.S.-based organization dedicated to the protection of unaccompanied migrant children. KIND was founded by the Microsoft Corporation and United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 30,000 unaccompanied children in removal proceedings and formed pro bono partnerships with over 755 corporations, law firms, law schools, and bar associations. KIND’s social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. KIND also helps children who are returning to their countries of origin to do so safely and to reintegrate into their home communities. KIND’s programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey.

Unaccompanied children are among the world’s most vulnerable individuals. They have traveled hundreds or thousands of miles to the United States, often completely on their own, to escape extreme violence, sexual abuse, human trafficking, and other dangers. Many of these children have fled northern Central America, a region gripped by humanitarian crises. With no protection in their countries of origin, children are forced to make a dangerous journey, and if they arrive to the United States, are immediately thrust into a complicated and protracted legal system. These children face daunting obstacles in their transition to the United States, including limited resources, language barriers, and the need to navigate the complex U.S. immigration system, often on their own.

Recent media articles and investigations have documented devastating and widespread labor exploitation of unaccompanied migrant children throughout many U.S. companies and industries.¹ Many children have worked long hours or overnight shifts in factories producing goods or cleaning dangerous industrial equipment. Harmful conditions have led to chronic illness, the loss of limbs, and other severe injuries. These reports have garnered critical attention

¹ See, e.g., Hannah Dreier, *Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.*, N.Y. Times, Feb. 25, 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>; Katie Johnston, *‘I’ve learned that things have a cost.’ Meet the migrant children working long hours in factories and fish plants across Mass.*, Boston Globe, updated Mar. 26, 2023, <https://www.bostonglobe.com/2023/03/26/business/ive-learned-that-things-have-cost-meet-migrant-children-working-long-hours-factories-fish-plants-across-mass/>.

to the need for a coordinated, whole-of-government effort to eradicate such exploitation, protect unaccompanied children's safety, and empower these children to thrive in communities across the nation.

Recommended Actions by the Office of Refugee Resettlement

The Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) plays a crucial role within this whole-of-government response. Among other actions, it is vital that ORR ensure the provision of legal and social services to *all* unaccompanied children placed with sponsors to help ensure these children's safety and well-being.

Post-release legal representation

In its work providing legal and social services to thousands of unaccompanied children, KIND has witnessed the fundamental role that legal representation plays not only in assisting unaccompanied children in navigating their immigration proceedings and securing humanitarian protection against dangers they fled in their countries of origin, but also in identifying and safeguarding children against other threats to their well-being, including labor exploitation.

The bipartisan Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that, "to the maximum extent practicable," HHS ensure legal counsel for unaccompanied children "to represent them in legal proceedings or matters and **protect them from mistreatment, exploitation, and trafficking.**"² HHS has set a vital goal of achieving legal representation of all unaccompanied children by FY 2027.³ But many if not most unaccompanied children who are released from ORR custody in the United States still lack attorneys. Consistent with its statutory mandate, and to meet its FY 2027 objective, HHS should robustly allocate funding provided by Congress for the expansion of legal services for this vulnerable population. Congress, for its part, should increase relevant funding levels.

Attorneys often function as unaccompanied children's most trusted advocates in situations of exploitation. By law, the attorney-client relationship is a confidential one. That confidentiality, coupled with the unique rapport built over months or years of representation, can mean that a lawyer is the sole authority-figure to whom children feel safe disclosing information about mistreatment. Indeed, children experiencing labor trafficking may be restricted in their ability to communicate or be forced to move between states or jurisdictions. Out of reach of others in whom they may confide, some children may only be able to reach out to their attorney for help. With the child's permission, attorneys can report incidences of exploitative labor and coordinate with other professionals, helping extricate children from abusive work environments.

Without lawful immigration status, many unaccompanied children remain at risk of deportation to the same harms they fled. Unscrupulous employers and criminal actors frequently prey upon

² William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

³ Administration for Children and Families, "FY 2024: Justification of Estimates for Appropriations Committees;" (<https://www.acf.hhs.gov/sites/default/files/documents/olab/fy-2024-congressional-justification.pdf>).

children’s fear of removal, their age, and financial insecurity to lure or force children into exploitative conditions or to compel them to remain in them. Without an attorney, it is virtually impossible for unaccompanied children to navigate the complex and adversarial U.S. immigration system so as to obtain immigration benefits that serve as bulwarks against unsafe working conditions, wage theft, and other labor abuses. Attorneys play a vital role in evaluating children’s eligibility for legal protection, counseling children on potential options, and helping children to complete applications for relief where eligible. Such assistance frequently entails specialized experience working with survivors of harm and exploitation and collaboration with social workers and other relevant professionals to ensure the child’s immediate and long-term safety and wellbeing. For many children, legal assistance is lifesaving, and both prevents deportation to danger and enables them to escape situations of harm, abuse, and exploitation in the United States. With permanent protection, children can gain the stability needed to begin healing from trauma and to pursue long-term goals and security.

Post-release social services

HHS should facilitate linguistically and culturally appropriate social services for all unaccompanied children for a minimum of 180 days following their release from ORR custody and for longer periods when caseworkers determine children require additional support. Such services may include in-home visitation by social workers, support with children’s educational enrollment and progress, connection to medical and mental health providers, and other assistance designed to uphold the safety of sponsorship settings, promote children’s integration into local communities, and provide children with tools for building secure and prosperous lives in the United States. Commendably, HHS has set a goal of providing post-release social services to all unaccompanied children by FY 2025.⁴ It is vital that ORR realize that aim and that Congress appropriate funding accordingly.

Such post-release legal and social services represent an essential complement to pre-release sponsor suitability assessments, together forming a protective matrix helping ensure this vulnerable population’s safety, including against the risk of labor exploitation. Under the TVPRA and *Flores* Settlement Agreement,⁵ which serve as the dual foundation for the protection of unaccompanied children in the U.S. immigration system, unaccompanied children must promptly be placed in the least restrictive setting that is in the best interest of the child, with prioritization of placement with qualified parents, guardians, or other relatives. This requirement reflects recognition not only of the importance of safe placements, but also that prolonged government detention in congregate care settings and separation from family members are detrimental to the mental and physical health of children, often producing severe and enduring psychological trauma.

In short, children must not remain in government custody for needlessly extended periods of time when there are safe sponsors available. These harmful outcomes occurred under the prior

⁴ HHS, “Departments of Labor and Health and Human Services Announce New Efforts to Combat Exploitative Child Labor” (Feb. 27, 2023); <https://www.hhs.gov/about/news/2023/02/27/departments-labor-and-health-and-human-services-announce-new-efforts-combat-exploitative-child-labor.html>.

⁵ *Flores v. Reno*, No. CV 85-4544-RJK (C.D. Cal. Jan. 17, 1997).

Administration when, for example, a 2018 information-sharing agreement between DHS and ORR that threatened the use of sponsor information for immigration enforcement purposes deterred good-faith sponsors, including loving family members, from coming forward to care for unaccompanied children, directly and needlessly protracting those children's government detention.⁶

It is vital, then, that ORR perform sponsor suitability assessments that are at once safe and expeditious. KIND supports ORR's recent audit of its sponsor suitability process, the identification of any procedural improvements promoting reunifications that serve both these ends, and agency efforts to ensure that currently required vetting guidelines are adhered to uniformly. Through a safe, timely placement process, combined with the provision of legal and social services to all unaccompanied children following placement with sponsors, ORR can help ensure the welfare of unaccompanied children both during and after their stay in government custody.

Recommended Actions by Other Government Agencies

Other federal and state government agencies play essential roles in protecting unaccompanied children from labor exploitation. Below are key actions that some of these agencies must take.

Department of Labor enforcement measures

The Department of Labor (DOL's) Wage and Hour Division must use all available enforcement mechanisms to ensure U.S. companies' compliance with child labor standards—standards that apply to unaccompanied and U.S. citizen child alike. Where appropriate, those mechanisms should include referrals for criminal prosecution. DOL's formation of the Interagency Taskforce to Combat Child Labor Exploitation, together with its National Strategic Enforcement Initiative on Child Labor, marks an important step in this direction. Congress should enhance the effectiveness of these enforcement efforts by passing legislation increasing civil monetary fines for offending companies—a long-overdue reform that would better disincentivize noncompliance. It is important that DOL and the Department of Homeland Security maintain appropriate firewalls around information-sharing for immigration enforcement purposes, and that DOL coordinate with other agencies to uphold older unaccompanied children's right to access lawful, safe, and appropriate work.

Department of Education funding approaches

The Department of Education and state education agencies should ensure that funding for newcomer and unaccompanied child education accounts for, and advances access to, innovative learning models that meet these youths' linguistic and cultural needs. These models may feature flexible schedules, multilingual language services, financial literacy, population-specific secondary education preparedness, and work-study and appropriate vocational or career-ready programs. Funding should also be dedicated for curriculum development and professional training for educators to better serve unaccompanied children. Educational benefits for these

⁶ DHS, "HHS and DHS Joint Statement on Termination of 2018 Agreement" (Mar. 12, 2021); <https://www.dhs.gov/news/2021/03/12/hhs-and-dhs-joint-statement-termination-2018-agreement>.

children include socio-emotional learning, flourishing peer networks, relationships with caring educators, and important community contacts.

Rollback of policies restricting families' access to humanitarian protection

Measures like the Title 42 border policy and proposed “asylum ban”—which restrict families’ ability to pursue humanitarian protection in the United States—compel a form of family separation by leaving many children with no meaningful choice but to arrive unaccompanied at the U.S.-Mexico border in pursuit of safety. Deprived of the support of parents and legal guardians forced to stay behind, these children may become particularly vulnerable to labor exploitation. By ending Title 42, asylum ban rulemaking, and other policies and practices that deny families access to legal relief, the Biden Administration would help ensure safe environments for migrant children in the United States and protection from mistreatment.