



U.S. House of Representatives
Washington, DC 20515

Congressional Progressive Caucus

Kids First: A Response to the Southern Border Humanitarian Crisis

Executive Summary

The United States and the international community have long recognized the unique needs of children seeking asylum. As an extremely vulnerable population, unaccompanied migrant children need special care and protection. We must not allow politics to jeopardize any child's safety and we should immediately reject attempts to solve the migration crisis on our southern border by circumventing due process or rule of law. Calls for expediting removal of children without due process, back to the violence they have escaped, is an attempt to simplify a complex situation and it is a derelict of U.S. responsibility under international standards.¹ When examining the reasons for migration, the United Nations High Commissioner for Refugees (UNHCR) found nearly 60 percent of children had fled violence and were in need of international protection.² Only two of 404 children interviewed reported that they had traveled to the U.S. because of rumors of potential immigration reform.³

An effective response must recognize that this is largely a refugee crisis and must place the best interest of the children first. Abrogation or repeal of the *Trafficking Victims Protection Reauthorization Act*, including the protections to children arriving from non-contiguous countries, will do nothing to alleviate the situation and could place children in harm's way.

The Congressional Progressive Caucus offers the following recommendations which include both administrative and congressional calls to action. Our recommendations are not exhaustive but reflect guidance from groups and organizations well-attuned to the needs of the children and those familiar with the ongoing crisis on the border and situations in Central American countries. None of the recommendations called for increased border militarization. Therefore, a response to this crisis should not focus on increasing ineffective border security. Instead, it should meet the current needs of the children, ensure their safety post-processing, address the root causes of migration and improve resources and coordination.

Initial Processing Needs of Unaccompanied Immigrant Children

In recent months, the United States has seen an influx of unaccompanied children. The treatment and administrative processing of unaccompanied minors is guided by the *Flores Settlement Agreement of 1997*, the *Homeland Security Act of 2002*, and the *Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)*. President Obama has appointed Federal Emergency Management Agency (FEMA) Administrator Craig Fugate to coordinate the government-wide response. However, improvements are needed to ensure the proper care of unaccompanied children during the initial processing stage.

A recently filed complaint on behalf of 116 unaccompanied immigrant children contains allegations of abuse and mistreatment while in U.S. custody including: sexual assault, beatings, the use of stress positions, verbal abuse, racially and sexually charged comments and death threats.⁴ Children consistently reported being held in unsanitary and overcrowded conditions beyond the legally mandated 72-hour period. More than 80 percent of the children described denial of adequate food and water while in CBP custody.

Recommendations:

1. Current laws to protect children should not be repealed, amended or circumvented, including the right to seek asylum and *TVPRA of 2008*.
2. U.S. Department of Homeland Security (DHS) should ensure that temporary CBP holding facilities and emergency shelters meet the required humanitarian standards for unaccompanied minors set forth in the *Flores. v. Reno* settlement and the *Trafficking Victims Protection Reauthorization Act*.
 - If a facility fails to meet minimum standards, a timeframe to bring the facility into compliance or the identification of a new location should be issued by FEMA.
3. DHS should consistently implement the *Orantes* injunction within all holding facilities to provide notice of rights and access to counsel, and to avoid improper transfers or removals.
4. DHS should ensure the implementation of the *Perez-Fuñez* injunction, which protects all unaccompanied minors who are detained by DHS for possible removal.
 - As head of the coordinated response effort, FEMA should provide a report on DHS compliance with all *Perez-Fuñez* provisions and *Orantes* injunctions.
5. Adequate screening methods, including screening for those who identify as LGBT, should be provided for unaccompanied minors by properly trained DHS agents.
6. Culturally sensitive mental and physical health assessments for unaccompanied minors should be provided in a child appropriate environment.
7. DHS should provide a report to Congress on its investigations of mistreatment and abuse allegations brought forth by unaccompanied minors or immigrant and human rights organizations. DHS should take immediate action to end any identified violations.
 - DHS should facilitate the accessibility and ability of children to file complaints and improve responsiveness to filed complaints.

Post Processing Needs of Unaccompanied Children

The *Trafficking Victims Protection Reauthorization Act of 2008* directs unaccompanied minors from contiguous countries to be screened within 48 hours. Unaccompanied minors from non-contiguous countries should be transferred within 72 hours from Immigration and Customs Enforcement (ICE) to the Department of Health and Human Services' (HHS) Office of Refugee and Resettlement (ORR) custody. ORR is required to house unaccompanied children in one of its shelters or find a foster arrangement for them. According to HHS there are 94 shelter– grantees operating throughout the U.S.

HHS indicates that family reunification accounts for approximately 90 percent of all unaccompanied minors. It is projected for FY 2014 that nearly 90,000 unaccompanied minors will be apprehended. As a result, the foster care system may need to be expanded to care for unaccompanied minors when reunification is not possible.

Recommendations:

1. ORR should ensure that children are placed into community-based care whenever possible, including placement with parent or relative sponsors, and strengthen screening mechanisms for sponsors to ensure children are being placed in safe and appropriate settings.
2. HHS should determine if it is in the best interest of the children to be placed with third party sponsors and ensure proper conditions and standards of care are used in making placement determinations, including a suitability assessment.
3. ORR should strengthen and expand follow-up services provided to unaccompanied minors and their sponsors once they are released from federal custody to ensure their safety and well-being, including:
 - Legal Services
 - Medical and Mental Health Services
 - Reunification efforts
 - Educational Services
4. All unaccompanied children placed into removal proceedings should be provided legal representation and child advocates to increase their chances for obtaining immigration relief and to ensure consideration of their best interests.
5. DHS and ORR should **not** implement restrictive policies requiring proof of legal status before family reunification can take place, as it could serve as a major disincentive to fearful children.
6. The U.S. Department of State should lead a safe repatriation and reintegration program, including follow-up services and monitoring, if the best interest of the child is deemed to be a return to his or her home country.

Addressing Root Causes

Honduras has the highest homicide rate in the world outside a war zone, with El Salvador and Guatemala not far behind, making the Northern Triangle one of the deadliest regions in the world.⁵ Law enforcement agencies in these countries are failing to provide protection to their citizens. Collaboration between military and local law enforcement with criminal groups is an ongoing crisis in these countries.⁶ Dire economic conditions and the constant threat of violence have driven desperate families and children to flee these deadly conditions.

Since 2008, the U.S. has ramped up hundreds of millions of dollars to security assistance through the Central American Security Initiative (CARSI), but security situations have significantly deteriorated.⁷ Many human rights groups contend that the U.S. is bolstering corrupt police and military forces that are violating human rights and contributing to the growth of violence in the Northern Triangle. Additionally, free trade agreements, including the North American Free Trade Agreement (NAFTA) and the Central America Free Trade Agreement (CAFTA) have led to the displacement of workers and subsequent migration from these countries. Multilateral development banks have funded projects with disregard to the local impact on community jobs and small farmers.

Recommendations:

1. Ensure supplemental funding supports nation-building initiatives in Northern Triangle Countries.
2. Conduct an immediate review of security assistance to Northern Triangle countries and Mexico, including CARSI and the Merida Initiative.
 - Publicly release information and metrics used to measure performance and results of security assistance programs.
 - Ensure metrics include impacts on overall violence, human rights violations, violence against women and forced displacement.
 - Release detailed information on uses and allocation of funds including specific police and military units receiving funding.
3. Support community-led sustainable economic development by evaluating the impact of foreign aid on impoverished regions and by investing in community supported projects.
 - Remove U.S. Trade Representative from the board of the Millennium Challenge Corporation to ensure U.S. development aid supports community-led projects.
4. Create a UN-sponsored commission to assist weak foreign judiciaries in effectively prosecuting corruption and dismantling organized criminal networks.
5. Stop the flow of deadly small arms from the U.S. to Mexico and Central America through universal background checks and enforced limits on the quantities sold to a single individual.
6. Reform U.S. trade policies that have contributed to forced migration.
 - Work with Mexico and Central American governments to create trade adjustment funds to mitigate the impact of trade agreements on small farmers and other vulnerable sectors.

Coordination and Resources

Failed coordination and misplaced resources have amplified the crisis on the southern border and has led to inadequate care and conditions for unaccompanied immigrant children. These children are more than just numbers.

Recommendations:

Coordination

1. Adopt a 'best interest of the child standard' for all federal agencies to guide procedures, actions and decisions regarding care and eligibility for humanitarian relief, including halting deportation if it is not in the best interest of the child.
2. Establish operational guidelines to coordinate and streamline the assistance capacity of NGOs, provision of child-friendly trauma trainings for relevant personnel.
 - U.S Border Patrol (CPB) and other personnel that come into contact with children should receive additional training on screening methods to identify victims and inform children of their right to seek asylum.
3. Make public comprehensive statistical data on apprehensions and screenings, federal processing, legal and advocate representation, and outcomes.
4. The Secretary of Homeland Security should consider designation of the Northern Triangle countries for Temporary Protective Status, as conditions in the countries may prevent nationals from returning safely.

Resources

1. Congress should pass an emergency funding supplemental bill to meet the comprehensive needs of a coordinated response to this humanitarian crisis. Funds should not be used to expand ineffective border security or to expedite removal proceedings of unaccompanied children without due process but rather to ensure access to required legal services.
 - Provide a minimum of \$200 million for the Office of Refugee Resettlement for FY14 to avoid reprogramming funds designed to support other adult refugee and their families.
 - Increase funding to the Executive Office of Immigration Review (EOIR) to reduce immigration case backlogs.
 - Establish a contingency fund to respond to the volatile needs of the crisis.
 - Dedicate specific resources to post federal custody and repatriation operations to ensure continuous child safety.
2. Shift U.S. foreign expenditures from ineffective security programs to development aid.
 - Re-orientate funding towards poverty alleviation, job training programs, education, women's equality and humanitarian assistance. Carefully target violence prevention funding to community based initiatives that are sustainable and accountable.
3. Eliminate and rescind funding to military and police involved in human rights abuses.
 - Adopt language under the FY15 Foreign Operations Appropriations Act to prohibit security assistance to governments that are not actively investigating and persecuting human rights violations.

¹ Convention Relating to the Status of Refugees, 1951. Protocol Relating to the Status of Refugees, 1967. Convention on the Rights of the Child, 1989. UNHRC Guidelines “Refugee Children – Guidelines on Protection and Care.

² UNHCR, Children on the Run.

³ Leslie Velez, senior protection officer at the U.N. High Commission for Refugees:

<http://www.nationaljournal.com/domesticpolicy/why-90-000-children-flooding-our-border-is-not-an-immigration-story-20140616>

⁴ Complaint filed by the National Immigrant Justice Center, Esperanza Immigrant Rights Project, Americans for Immigrant Justice, Florence Immigrant and Refugee rights Project, and ACLU Border Litigation Project, “Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection” June 11, 2014.

⁵ Statement of U.S. Committee for Refugees and Immigrants submitted to House Foreign Affairs Committee, Subcommittee on the Western Hemisphere. June 25, 2014.

⁶ Ibid