



Center for the Human Rights of Children
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July 23, 2014

The Honorable Barack Obama

President of the United States of America
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Obama:

The Center for the Human Rights of Children at Loyola University Chicago comprises an interdisciplinary group of educators and scholars representing the fields of child development, child welfare, social work, law, psychology, and mental health. We are writing to express our grave concern about the recent proposals to subject Central American children to an accelerated screening and removal process that fails to take into account their age, their vulnerability, and their developmental capacity. Accelerated processing of minors entering the border also places children in serious danger and undermines the bipartisan support and policy intentions of the Trafficking Victims Protection Act of 2000 (“TVPA”) and Trafficking Victims Reauthorization Act of 2008 (“TVPRA”), which seek to protect children from the heinous crime of human trafficking and improve procedural protections for vulnerable children entering the United States. The following outlines three interrelated recommendations based on our concerns about the current and proposed responses to the crisis of children at the border.

1. Release Children in Custody to Qualifying Family Members or Sponsors to Promote Well-Being and Minimize Trauma

The media images and accounts from observers show children being housed in inadequate conditions, including freezing cold cells and rooms, sleeping on cement floors, and receiving inadequate food, bedding, sanitation, and medical care.^{[i][ii]} Children have an almost universal psycho-emotional and developmental need for a primary caregiver to provide for basic needs, to ensure their well-being and maturation. Periods of detention, even of just a few days, can be disruptive, traumatic events which can impact their long-term development. Unaccompanied children who have family members in the United States should be immediately placed in the custody and care with local, qualifying family members. Children without family members in the United States should be placed in the least restrictive setting that is in the best interest of the unaccompanied child.ⁱⁱⁱ Moreover, any new facilities designated for children and/or families should be located in areas that are easy to access by family members and monitored to ensure that the children’s needs are being met.

2. Use Research-Informed Principles and Practices to Process Unaccompanied Children

Under the proposed legislation, including the HUMANE Act and Asylum Reform and Border Protection Act, Customs Border Patrol Agents (CBP) would be used to screen all children for immigration relief and conduct accelerated proceedings with immigration judges to make a determination. This places undue responsibility on law enforcement professionals, and relies on procedures that are not informed by child

development expertise undermining the principles of the TVPA and TVPRA. Child development and mental health research has made clear that children and adolescents have not fully matured in areas of cognition, language, emotional development, and maturity of judgment.^{[iv][v][vi][vii]} Additionally, over the past several decades, mental health and child development professionals have come to appreciate the critical role of trauma in shaping the development and behavior of children and youth. This has serious implications for both assessment of and intervention with unaccompanied minors at the border.

Current knowledge of child and adolescent development demonstrates that the capacity to make informed and mature judgments about legal matters is not complete for most adolescents, particularly in stressful situations.^{viii} Research shows that the majority of children fleeing Central America have experienced trauma because of the extremely violent communities they fled and adverse experiences en route to the United States.^{ix} Children who have experienced chronic trauma – multiple and pervasive violent events – have been shown to be even *more* difficult to identify as victims of abuse and neglect, including trafficking, as the effects of this level of trauma can hinder communication between children and adults.^x Moreover, research has shown that when children are detained in frightening conditions, their ability to disclose traumatic events can be further compromised.^{xi} Thus, children who have experienced these multiple incidents of trauma, including many who are arriving from Central America, require more sophisticated interventions.^{[xii][xiii][xiv][xv][xvi][xvii][xviii]}

These interventions, which necessitate time and developmentally appropriate expertise, reflect some of the practices already maintained in the United States. For example, every state in the United States has interdisciplinary Child Advocacy Centers (CACs), composed of child development, medical, mental health, and law enforcement personnel. CACs provide a multi-disciplinary and developmentally trained approach to interviewing and responding to children who are victims of crime. Similarly, these practices are reflected in the TVPA and TVPRA, which recognize that law enforcement agencies are not appropriate bodies to make initial determinations of humanitarian aid for minors. The TVPRA, for example, explicitly assigns the Department of Health and Human Services the responsibility to make determinations for interim relief for potential trafficked children.^{xix}

Screening by a uniformed law enforcement agent and accelerated determination procedures are contrary to best practices and knowledge in the fields of child welfare, child development, and mental health and children. Such procedures will likely elicit unreliable responses, and cause additional trauma. They also ignore existing United States-based practices of responding to vulnerable children, creating a dangerous precedent for all children.

3. Maintain Humanitarian Principles of the TVPA and TVPRA to Protect Vulnerable Children

The TVPRA was intended to “strengthen US efforts to stop the abhorrent practice of human trafficking both in the United States and around the world.”^{xx} The TVPRA also acknowledged the extreme circumstances that many Central American children were fleeing from. Recognizing that “unaccompanied alien children are the most vulnerable immigrants,”^{xxi} deserving of both humane and fair treatment while in custody, 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.”^{xxii} These children are transferred to the jurisdiction of the Department of Health and Human Services, which “must make initial determinations of benefit eligibility for minors who are potential trafficking victims” in order to “facilitate the immediate assistance desperately needed by children rescued from exploitative and traumatic situations.”^{xxiii} These procedures were enacted with broad, bipartisan support and leadership to provide more meaningful

and informed opportunities to learn of the child's capacity, risk of human trafficking, and capability of making a voluntary, independent, and informed decision about whether to enter or withdraw and application to enter the United States. The TVPRA also includes provisions for children from non-contiguous countries who are identified at risk of being trafficked from being repatriated into the hands of traffickers or abusers.

Efforts to dilute this legislation and the procedures currently outlined for Central American children, including the proposed "HUMANE Act" and "Asylum Reform and Border Protection Act" will compromise US efforts to protect unaccompanied children entering the United States as well as those children who have been trafficked, and will obstruct efforts to prevent child trafficking from occurring.

Conclusion

We recognize the pressure and strain on resources to implement the law with the current volume of unaccompanied children and families. However, revising the definition of an unaccompanied child and accelerated processing and removal, among other short-term proposals, will not adequately address the migration of children fleeing violence and deprivation in Central America, or adequately screen for children eligible for protections under asylum or human trafficking laws. If the US government assumes a reactive response to this crisis, without taking into account what we know about child development, child welfare, child trauma, violence against children, and the conditions in Central America, the result will be endangering the lives of the most vulnerable members of society. There are many dedicated experts in pediatrics, child welfare, and children's mental health in universities, philanthropy, and social service agencies who could be recruited in partnership efforts to respond constructively to this crisis. We commend the bipartisan efforts to protect unaccompanied children and child trafficking victims outlined in the TVPA and TVPRA, and encourage both Congress and the White House to uphold these principles. We strongly urge that any efforts to assist children at the border to demonstrate our national value of dignity and well-being for all children.

Sincerely,



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James Garbarino, PhD
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CC: Senator John Cornyn	Speaker John Boehner
Senator Ted Cruz	Congressman John Carter
Senator Dick Durbin	Congressman Henry Cuellar
Senator Dianne Feinstein	Congressman Bob Goodlatte
Senator Jeff Flake	Congressman Luis Gutierrez
Senator Mark Kirk	Congresswoman Nancy Pelosi
Senator Patrick Leahy	Congressman Hal Rogers
Senator John McCain	Congresswoman Janice D. Schakowsky
Senator Mitch McConnell	
Senator Barbara Mikulski	
Senator Harry Reid	
Senator Charles E. Schumer	

ⁱ Burnett, J. (2014, July 24). Amid Wave Of Child Immigrants, Reports Of Abuse By Border Patrol. [Radio broadcast]. In T. Wahl (Producer), Morning Edition. Washington, DC: National Public Radio. Retrieved from <http://www.npr.org/2014/07/24/334041633/amid-wave-of-child-immigrants-reports-of-abuse-by-border-patrol>

ⁱⁱ Mirotta, N. and Partlow, J. (2014, June 12). Central American Migrants Overwhelm Border Patrol Station in Texas. The Washington Post. Retrieved from http://www.washingtonpost.com/world/the_americas/central-american-migrants-overwhelm-border-patrol-station-in-texas/2014/06/12/7359534e-2e1b-4a6b-b010-f622f1cac3f0_story.html

ⁱⁱⁱ 8 U.S.C. § 1232. Enhancing Efforts to Combat the Trafficking of Children. (c) Providing Safe and Secure Placements for Children. (2) Safe and Secure Placements. (A) Minors in Department of Health and Human Services Custody. Subject to section 279 (b)(2) of title 6, an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child.” Available at <http://www.law.cornell.edu/uscode/text/8/1232>. Importance of foster care and home-like environments for children, as well as the viability of coordinating with local child welfare authorities in establishing foster care has been well established in the Bucharest Early Intervention Project (<http://www.bucharestearlyinterventionproject.org/>), a joint collaboration between researchers at Tulane University, University of Maryland, and Boston Children's Hospital.

^{iv} Sroufe, L. A., Egeland, B., Carlson, E.A., and Collins, W.A. (2005). The development of the person: The Minnesota study of risk and adaptation from birth to adulthood. New York: Guilford.

^v Siegel, D. (2012). The Developing Mind, Second Edition: How Relationships and the Brain Interact to Shape Who We Are. Guilford Press.

^{vi} Siegel, D.J. (2001). Toward an interpersonal neurobiology of the developing mind: relationships, “mindsight”, and neural integration. *Infant Mental Health Journal*, 22(1-2), 67-94.

^{vii} Perry, B. D. (2002). Childhood experience and the expression of genetic potential: What childhood neglect tells us about nature and nurture. *Brain & Mind* 3(1): 79-100.

^{viii} Steinberg, L. and Scott, E. (2003) Less guilty by reasons of adolescence: developmental immaturity, diminished responsibility and the juvenile death penalty. *American Psychologist*. 58 (12) 1009-1018.

^{ix} Children on the Run. UNHCR: The UN Refugee Agency. Retrieved from http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the

[%20Run_Full%20Report.pdf](#); See also http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf

^x Cohen, J. and the Work Group on AACP Quality Issues. Practice Parameter for the Assessment and Treatment of Children and Adolescents With Posttraumatic Stress Disorder. : Journal of the American Academy of Child & Adolescent Psychiatry Volume 49, Issue 4 , Pages 414-430, April 2010 .

^{xi} Jacqueline Bhabha, et al. Seeking Asylum Alone Unaccompanied and Separated Children and Refugee Protection in the U.S., Harvard University (2006) Retrieved from http://www.law.yale.edu/documents/pdf/Clinics/Seeking_Asylum_Alone_US_Report.pdf

^{xii} Courtois, C. and J. E. Ford (2009). Treating complex traumatic stress disorders: An evidence-based guide. New York, Guilford.

^{xiii} Ford, J. and C. Courtois (2013). Treating complex stress disorders in children and adolescents: Scientific foundations and therapeutic models. New York, Guilford.

^{xiv} Gil, E. (2010). Working with children to heal interpersonal trauma: The power of play. New York, Guilford.

^{xv} Landreth, G. L. (2012). Play therapy: The art of the relationship (3rd ed.). New York, Taylor and Francis.

^{xvi} Levy, A. and J. Wall (2000). Children who have witnessed community homicide: Incorporating risk and resilience in clinical social work. Families in Society: The Journal of Contemporary Human Services, 81: 402-411

^{xvii} Lieberman, A. and P. van Horn (2011). Psychotherapy with infants and young children: Repairing the effects of stress and trauma on early attachment. New York, Guilford.

^{xviii} Lykes, M. B. (1994). Terror, silencing, and children: International multidisciplinary collaboration with Guatemalan Maya communities, Center for Human Rights and International Justice. Center Affiliated Faculty Publications, Boston College: 1-22.

^{xix} 22 U.S.C. § 7105 (b)(F)(i) (2008). Eligibility for interim assistance of children. “(i) DETERMINATION.—Upon receiving credible information that a child described in subparagraph (C)(ii)(I) who is seeking assistance under this paragraph may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance under this paragraph. The Secretary shall have exclusive authority to make interim eligibility determinations under this clause. A determination of interim eligibility under this clause shall not affect the independent determination whether a child is a victim of a severe form of trafficking.

^{xx} William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the Senate, 110th Congress (2008) (Testimony of Patrick Leahy) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BCD4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originat ionContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>

^{xxi} Id.

^{xxii} William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the Senate, 110th Congress (2008) (Testimony of Dianne Feinstein) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BCD4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originat ionContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>

^{xxiii} William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Hearing before the House of Representatives, 110th Congress (2008) (Testimony of Chris Smith) Retrieved from <https://a.next.westlaw.com/Link/Document/FullText?findType=l&pubNum=100003&cite=UUID%281BB554DC0C7-9411DDB70BC-D4D0A3C280C%29&originatingDoc=IE404DAF0D5A011DDBC03E3FA6ED9E47F&refType=LL&originat ionContext=reportsAndRelatedMaterials&contextData=%28sc.DocLink%29&transitionType=ReportsRelatedItem>