



June 3, 2015

A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings

Present a Critical Need for Legal Representation

The American Bar Association (ABA) is gravely concerned about the lack of legal representation on behalf of unaccompanied children in removal proceedings. The “humanitarian crisis” at the border confronting the nation last summer has developed into a nationwide due process crisis in our country’s immigration court system, a system that is already significantly overburdened and under-resourced. These children, many of whom entered the United States during the unprecedented “surge” in 2014, are now facing adversarial removal proceedings opposed by experienced government attorneys, with only about 32% represented by counsel.¹ It is highly unlikely that an unrepresented child will prevail in immigration court, even if he or she has a *bona fide* claim for protection. A recent study found that represented children have a 73% success rate in immigration court, as compared to only 15% of unrepresented children.² Furthermore, studies show that children who are represented have a much higher appearance rate in immigration court, 92.5%, versus 27.5% for unrepresented children.³

Starting last summer, the Executive Office for Immigration Review (EOIR) began to prioritize the cases of children who entered the United States during the surge period. As a result, EOIR has expedited the initial hearings after they reunify with sponsors, leaving very little time for the children and their families to get oriented and find counsel before appearing in court.⁴ This “perfect storm” has resulted in a total of over 7,706 removal orders placed against unaccompanied children between October 2013 and January 2015.⁵ Until the government recognizes the need for universal representation and allocates sufficient funding to make it a reality, it is up to the legal community to respond. The ABA has worked on these issues for several years and continues to take action to address the current crisis through its Commission on Immigration (Commission) and Working Group on Unaccompanied Minor Immigrants (Working Group). The Working Group has set up a website for this purpose at www.ambar.org/ican. Attorneys willing to volunteer to represent unaccompanied children can enroll directly at this website by

¹ See, Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court*, Nov. 25, 2014, available [here](#).

² *Id.*

³ See, American Immigration Council, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court*, July 2014, available [here](#).

⁴ Brian M. O’Leary, Chief Immigration Judge, Executive Office for Immigration Review, *Docketing Practices Relating to Unaccompanied Children Cases and Adult with Children Released on Alternatives to Detention Cases in Light of the New Priorities*, Mar. 24, 2015 available [here](#).

⁵ Kate Linthicum, *7,000 Immigrant Children Ordered Deported Without Going to Court*, *L.A. Times*, Mar. 6, 2015, available [here](#).

signing up at the “Volunteer Now” link. Those who enroll will be matched with a legal service provider in their area who will do their best to match the volunteer with a child in need of representation.

1. Background:

Who is an Unaccompanied Alien Child (UAC)?

The Homeland Security Act of 2002 transferred the responsibility for care and custody of “unaccompanied alien children” from the enforcement-oriented (former) Immigration and Naturalization Service (INS) to the welfare-based U.S. Department of Health and Human Services, Office of Refugee Resettlement (DHHS, ORR). 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.”⁶ This major reform was applauded by national advocates who had long criticized the government for placing children in the care and custody of the same agency responsible for prosecuting their deportation cases and executing deportation orders.

Current Situation with Unaccompanied Children at the Border

While the number of children entering the United States at the southwest border has declined considerably since last summer, the overall number remains significant and twice the number that entered the country in 2011. From October 2014 through April 2015, 18,919 unaccompanied children have been processed at the border, a 48% decline from the same time last year.⁷ During the height of the surge in June 2014, over 10,000 unaccompanied children entered the United States in one month. The Obama Administration responded with a multi-faceted approach to stopping this steady stream with cross-agency coordination, additional enforcement resources, expedited child and family dockets in immigration court and intensive diplomacy efforts and concerted deterrent strategies in Mexico and Central America, strategies that resulted in making it more difficult for children to reach the United States.⁸

The Department of Homeland Security (DHS), a successor to the former INS, reported that 68,541 unaccompanied children were processed by CBP in the United States between October 1, 2013 and September 30, 2014, as compared to 38,759 in Fiscal Year (FY) 2013, a 77% increase.⁹ Only two years earlier, in FY 2011, CBP apprehended a total of 15,701 children, the vast majority of whom came from Mexico.¹⁰ Prior to FY 2012, an average of 7,000 to 8,000 unaccompanied children were detained and

⁶ 6 U.S.C. § 279(g).

⁷ See U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

⁸ See Marc R. Rosenblum, *Unaccompanied Child Migration to the U.S.: The Tensions Between Protection and Prevention*, Migration Policy Institute, April 2015, available [here](#).

⁹ See U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

¹⁰ See *id.*

held in ORR shelters annually.¹¹ There has clearly been a marked increase over the past three years, and especially over the early summer months of 2014. Statistics from FY 2014 show these children are mostly from El Salvador (24%), Guatemala (25%), Honduras (28%) and Mexico (23%) and range in age from infants to 17 years.¹² 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. Statistics show that the recent drop in numbers reflect a decrease in children entering the country from El Salvador and Honduras, while children from Mexico and Guatemala continue to enter at the same rates as during the surge.¹³

Once children are apprehended by Border Patrol agents they are transported to a CBP processing station and held for hours or days in cells during processing. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) requires that CBP determine whether these children are unaccompanied within 48 hours and if deemed to be unaccompanied, transferred to ORR custody within 72 hours. In practice, especially during the height of the surge in 2014, the children were often held much longer, up to 15 days, or more, in multiple holding facilities. CBP communicates with ORR to identify a short-term placement for the children. Once a placement is confirmed, officers from Immigration and Customs Enforcement (ICE) transport the children from CBP stations to the ORR shelters. At the shelters the children are finally able to shower, rest, eat hot food, make phone calls and receive medical care, counseling, education and legal services. Legal service providers meet with the children and provide a “Know Your Rights” presentation and perform individual screenings within days of their arrival to the shelter. The screenings are used to make referrals to pro bono attorneys for children who are identified as eligible for legal relief.

The TVPRA requires that children from non-contiguous countries be placed in removal proceedings before an Immigration Judge and provides that they have the right to apply for legal relief and receive counsel “to the greatest extent practicable.” Children from contiguous countries (Mexico and Canada) can be immediately returned to their countries after a cursory screening by a uniformed Border Patrol agent. There have been proposals in Congress to extend this provision to children from non-contiguous countries, a proposal which is of great concern to the ABA and violates long-standing ABA policy to the contrary.¹⁴ A confidential report from the United Nations High Commissioner for Refugees (UNHCR), leaked to the media, found these Border Patrol screenings to be woefully inadequate and concluded that they fail to protect Mexican children.¹⁵ Furthermore, the UNHCR concluded that Border Patrol agents should not be charged with screening children for risks of trafficking, persecution or

¹¹ 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](#).

¹² See U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

¹³ See Marc R. Rosenblum, *Unaccompanied Child Migration to the U.S.: the Tensions Between Protection and Prevention*, Migration Policy Institute, April 2015, p. 3, available [here](#).

¹⁴ See Standards For the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children In the United States, Section VIII, A, Adjudication of Claims of Children, American Bar Association Comm. on Immigration, Aug. 2004, available [here](#).

¹⁵ Vox, *The Process Congress Wants to Use for Child Migrants is a Disaster*, July 15, 2014, available [here](#).

voluntariness of return.¹⁶ According to the report, Border Patrol agents simply don't know what to look for to determine if a child is being victimized or what to do if he or she is being victimized.¹⁷

Historically, about 85% of unaccompanied children have been reunified with approved sponsors within an average of 35 days.¹⁸ When the number of child migrants and refugees began to surge at the southwest border, accelerated reunification in as little as 7 days without access to traditional legal screenings began occurring. Children are released to sponsors within the United States. Some sponsors are the parents of these children and others are extended family members or family friends. These children are in removal proceedings and the government contends they have no right to appointed counsel or *guardians ad litem*. They are reunifying in cities and states all over the United States. According to a recent report from ORR analyzing data from January through July 2014, the top six states for reunification include New York, Texas, California, Florida, Maryland and Virginia.¹⁹ Looking more closely at this information by county, it appears that the top six cities for reunification include Baltimore, Dallas, Houston, Miami, Los Angeles and New York.²⁰

Once the children are reunified, there is no one agency coordinating their legal representation although a few non-profit groups run dedicated pro bono projects in some of the major cities. For example, Kids in Need of Defense (KIND), has offices in eight major cities including Baltimore, Washington DC, Boston, Houston, Seattle, Los Angeles, New York and Newark.²¹ The Office of Refugee Resettlement recently awarded two additional non-profit agencies, the U.S. Committee for Refugees and the U.S. Conference of Catholic Bishops, with grants of over \$2 million each for post-release legal services serving reunified children in removal proceedings throughout the country.²² Additionally, in June 2014, the Department of Justice and the Corporation for National and Community Service announced "justice AmeriCorps" a grant program intended to enroll 100 lawyers and paralegals throughout the country to provide additional legal services to vulnerable children in removal proceedings who meet certain criteria.²³ At a February 2015 meeting between government officials, law firms and legal advocacy groups, the Deputy Director of the Executive Office for Immigration Review, shared statistics reflecting immigration courts with the highest number of UAC "surge" cases in the nation. The information revealed New York City as the court with the largest number of pending UAC "surge" cases, over 2,000, with Baltimore, Arlington, Miami, Houston and Los Angeles, following closely behind.²⁴ Again, only about one-third of these

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 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](#).

¹⁹ Unaccompanied Children Released to Sponsors by State, Office of Refugee Resettlement, available [here](#).

²⁰ Unaccompanied Children Released to Sponsors by County, Office of Refugee Resettlement, available [here](#).

²¹ See KIND's website [here](#).

²² See announcement [here](#).

²³ See, Department of Justice press release [here](#).

²⁴ White House meeting on February 3, 2015, information provided by EOIR Deputy Director Ana Kocur, courts with the largest UAC "surge" dockets, pending cases, both represented and unrepresented: New York City (over 2,000); Baltimore & Arlington (over 1,500); Miami, Houston and Los Angeles (over 1,400); Charlotte, New Orleans,

children are represented by counsel. In July 2014, several groups headed by the American Civil Liberties Union Foundation of Southern California came together to file a nationwide lawsuit challenging the lack of government appointed counsel on behalf of children in removal proceedings.²⁵ The lawsuit is currently pending. Legal representation and access to and by counsel are paramount issues of concern for the American Bar Association.

In response to the “surge” last summer, the Administration became determined to stem the flow of unaccompanied children and families entering the country from Central America and responded with a multi-pronged approach which includes expediting the processing of these children and families through the system; dedicating additional enforcement and detention resources; coordinating among all relevant federal agencies and engaging with foreign governments to discourage and deter illegal immigration to the United States.²⁶ American officials have been encouraging the Mexican and Guatemalan authorities to interdict youth and return them swiftly to their countries of origin. These efforts have apparently had a significant impact, since the number of unaccompanied children entering the United States at the Southwest border dropped sharply last year from a high of 10,622 in June to 2,424 in September.²⁷

Current Situation of Detained Families at the Border

Beginning last year, the Administration also vastly changed the manner it treats the increasing numbers of families entering the United States, specifically women with children.²⁸ DHS reported that between October 1, 2013, and September 30, 2014, CBP apprehended 68,445 family units of mainly women with at least one child as compared to 14,855 in FY 2013, a 361% increase.²⁹ During fiscal year 2015, this number has also dropped significantly, by 30% compared to FY 2014. DHS reports that from October 1, 2014 through March 31, 2015, a total of 13,911 individuals in family groups entered the U.S. in comparison to 19,830 during the same period in FY 2014. Until last summer, these families would generally be placed in removal proceedings, released on their own recognizance and directed to appear in immigration court at a future date. In an effort to deter additional migration of family groups, in late June 2014, the government 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, with the closest lawyers who could represent the detainees more than a three-hour drive away. Due in part

Newark, Memphis, San Francisco (over 600); Boston and Orlando (over 500); Dallas (over 400); Atlanta and Chicago (over 300); Cleveland, Omaha, San Antonio, Philadelphia and Kansas City (over 200).

²⁵ See ACLU press release [here](#).

²⁶ Written testimony of FEMA Administrator Craig Fugate, CBP Commissioner Gil Kerlikowske, and ICE Principal Deputy Assistant Secretary Thomas Winkowski for a Senate Committee on Homeland Security and Governmental Affairs hearing titled “Challenges at the Border: Examining the Causes, Consequences, and Responses to the Rise in Apprehensions at the Southern Border,” July 9, 2014, available [here](#).

²⁷ See Marc R. Rosenblum, *Unaccompanied Child Migration to the U.S.: The Tensions Between Protection and Prevention*, Migration Policy Institute, Executive Summary, April 2015, available [here](#).

²⁸ Julia Preston, *As U.S. Speeds the Path to Deportation, Distress Fills New Family Detention Centers*, N.Y. Times, Aug. 5, 2014, available [here](#).

²⁹ See U.S. Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, available [here](#).

to major problems with conditions at this facility, it was closed in December of 2014 and the mothers and children were transferred to detention centers in South Texas.

In August 2014, ICE opened an additional family detention facility in Karnes City, Texas, and plane loads of women and children have been deported to Central America from family detention facilities with little or no due process. In December 2014, another family detention facility was opened in Dilley, Texas, 70 miles southwest of San Antonio, Texas, with plans to reach 2,400 beds in the near future. This would increase the number of newly-created beds for families to over 3,500 and require the deployment of additional Asylum Officers and Immigration Judges. Hearings at these facilities are held by videoconference presided over by judges in courtrooms who may be many hundreds of miles and several time zones away. The government may be represented by counsel located in alternative locations. The ABA expressly opposes video-conference hearings involving children and strenuously opposes denial of access to counsel and deprivation of due process rights.³⁰ The Karnes facility and the Dilley facility are both operated by private contractors, the GEO Group, Inc. and Corrections Corporation of America, respectively. The ABA President recently wrote a letter to DHS Secretary Jeh Johnson expressing concern over the recent expansion of immigration detention, including the detention of women and children seeking asylum.³¹

DHS initially insisted on continued mandatory detention even after the families were found to have established a “credible fear” of return to their home countries, a determination indicating a significant possibility of qualifying for asylum or withholding of removal and permitting them to proceed with seeking relief before the immigration court.³² The government persists in its contention that there is no right to counsel at either the “credible fear” interview or at a hearing before the immigration judge to review a negative “credible fear” finding. It also persists in its position that there is no right to appointed counsel at any stage of the immigration removal process.³³ For several months the government also strenuously opposed release on bond/parole making arguments that these women and children posed indirect national security risks by focusing enforcement resources away from more direct threats at the border. The government also resorted to a “no bond” policy as a deterrent effect to other potential migrant families. The ACLU Immigrant Rights Project and others filed a lawsuit challenging these practices on behalf of detained women and children who had passed a “credible fear” interview. On February 20, 2015, a U.S. District Court in the District of Columbia granted a preliminary injunction against the government for denying bond based on deterrence arguments in *RILR v. Johnson*. Since the issuance of this order, ICE has begun to issue bonds, generally set at \$7,500 to \$10,000, amounts the families often cannot pay.

Reasons for the Recent Exodus

³⁰ Standards For the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children In the United States, Section VIII (B)(2)(b), Adjudication of Claims of Children, ABA Comm. on Immigration, Aug. 2004, available [here](#).

³¹ ABA letter from President William Hubbard to DHS Secretary Jeh Johnson dated March 26, 2015, available [here](#).

³² 8 U.S.C. § 1225(b)(1).

³³ 8 U.S.C. § 1229(b)(3).

The vast majority of the children who arrived in the 2014 surge came 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 Nicaragua is minimal and the number from Mexico has remained relatively constant over the past several years. Why have so many children left the Northern Triangle countries of Central America and for what reasons? The answers are complicated and varied; although there is no doubt that the extraordinarily high incidence of violence from gangs and international criminal organizations is a major factor.³⁴ Sonia Nazario, an award-winning journalist who has researched and written extensively on the conditions that spur Central American children to travel to the United States, wrote an Op-ed piece published in the New York Times claiming that violence, not poverty, is the main reason for the recent exodus of children.³⁵ When comparing the numbers of children arriving annually by nationality, it is clear that the decrease in numbers in FY 2015 is made up almost exclusively in a drop in arrivals of children from El Salvador and Honduras, but not Guatemala or Mexico.³⁶ This is an interesting observation that most likely has more to do with effective prevention, interdiction and deportation efforts in Central America and Mexico than any improvement in county conditions in El Salvador and Honduras.

Since 1989 the ABA has operated a pro bono project on the Texas/Mexico border called ProBAR, the South Texas Pro Bono Asylum Representation Project. ProBAR provides legal information and pro bono representation to indigent, detained adults and unaccompanied children in the Rio Grande Valley of lower South Texas. Many of the children represented by ProBAR describe having been assaulted, threatened and recruited by gangs or drug cartels and ordered to participate with these groups under the threat of death. 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 regular “fees.” Entire neighborhoods are controlled by rival gangs and innocent families and small business owners 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, especially poor, urban areas. While large numbers of children are targeted personally for gang violence, even those who have not been targeted fear they will be targeted in the future. Other children represented by ProBAR describe being victims of domestic violence, trafficking, exploitation and neglect. Some children leave their countries with the expectation of supporting their parents and siblings living in abject poverty back home; families may even mortgage the only home or piece of land they have to borrow the money for the child’s trip. Currently, 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, poverty and violence.

³⁴ Frances Robles, *Fleeing Gangs, Children Head to U.S. Border*, N.Y. Times, July 9, 2014, available [here](#):

³⁵ Sonia Nazario, Op-Ed., *A Refugee Crisis, Not an Immigration Crisis*, N.Y. Times, July 11, 2014, available [here](#).

³⁶ Migration Policy Institute webinar March 31, 2015,

These Central American countries all were impacted by civil wars in the 1980s and 1990s and continue to be plagued with insecurity, impunity, devastated economies 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 per 100,000 residents in Chicago.³⁷ 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.³⁸ Meanwhile, in El Salvador, the two-year gang truce fell apart in 2014 and in March 2015 there were 481 reported homicides, more than 15 per day, positioning El Salvador to surpass Honduras as the deadliest peace-time country in the world.³⁹ 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, many adults including parents fled for the United States seeking safety, protection and employment and have remained in the U.S. for 5, 10, or 15 years and more, working and sending money back home while their children are left behind, being raised by aging grandparents and other extended family members.

The failure of comprehensive immigration reform is another factor that has led to increased migration of children. Many Central American parents who came to the United States five, ten or fifteen years ago continue to live in the United States without legal status. The failed effort at immigration reform has caused some parents to lose hope that they will ever be able to travel back to their countries legally and out of desperation some have paid smugglers thousands of dollars 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. Children without adequate adult supervision are often targets for gangs and drug cartels. In other cases, children decide it is time to leave on their own, determined to join their parents and U.S.-born siblings in the United States.

The fact that it has become easier and quicker to reunify with family members 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 detention and 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, although the "reunification" process is only a temporary authorization to allow children to remain in the United States during the pendency of their removal proceedings. The children have no right to work and no automatic right to any permanent status. Children, like adults, who fail to appear for their removal proceedings will receive an *in absentia* removal order and eventually ICE will process their removal.

Access to Counsel and Due Process Concerns

³⁷ 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](#).

³⁸ *Id.*

³⁹ Marcos Aleman and Alberto Arce, *Homicides in El Salvador Reach Record as Gang Violence Grows*, Yahoo.com, April 9, 2015, available [here](#).

While there are limited options for people to remain legally in the United States when they enter without authorization, it is widely understood that an individual is much more likely to prevail in immigration court if he or she is represented.⁴⁰ A recent study focusing on the success rates of children in removal proceedings demonstrated that 73% of represented children were granted the right to remain in the United States as compared to 15% of unrepresented children.⁴¹ On the other hand, the Immigration Court system is so severely backlogged and under-resourced that it often takes years to complete a single 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.

Recently, as an additional effort to prioritize the processing of children's cases, the Executive Office for Immigration Review began to expedite the cases of unaccompanied children who were released from detention and reunified beginning in May 2014. These "rocket dockets" require children's cases to be set for an initial master calendar hearing within 21 days of release from detention. These expedited proceedings raise significant due process concerns and have resulted in confusion for the children and their families and problems related to proper notice and lack of access to counsel in immigration court.⁴² While the initial master calendar hearings are required to be expedited, the Chief Immigration Judge recently clarified that the Immigration Judges are free to use their discretion to allow adjournments in subsequent hearings as necessary.⁴³

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.⁴⁴ 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 besides asylum, there is very limited legal relief for migrants who enter the country without authorization.

⁴⁰ See New York Immigrant Representation Study, *Accessing Justice the Availability and Adequacy of Counsel in Immigration Proceedings*, Dec. 2011, available [here](#).

⁴¹ See, Transactional Records Access Clearinghouse, *Representation for Unaccompanied Children in Immigration Court*, Nov. 25, 2014, available [here](#).

⁴² John Fritze, *Immigration Court Speeds Review of Cases Involving Children*, The Baltimore Sun, August 20, 2014, available [here](#).

⁴³ See, Brian M. O'Leary, Chief Immigration Judge, Executive Office for Immigration Review, *Docketing Practices Relating to Unaccompanied Children Cases and Adult with Children Released on Alternatives to Detention Cases in Light of the New Priorities*, Mar. 24, 2015 available [here](#)

⁴⁴ 8 U.S.C. § 1101(a)(42)(A).

The UNHCR, in a recent report, found that 58% of the children interviewed in a 2013 study raised actual or potential legal protection concerns.⁴⁵ 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 United States does not always interpret its asylum laws as broadly as recommended by the UNHCR. It is difficult to win an asylum case, especially in the adversarial Immigration Court system (unaccompanied 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 must 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.⁴⁶ 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 often 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 protected 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 foreign nationals from returning safely.⁴⁷ This would be one way to relieve the courts of having to adjudicate the majority of these cases and give people the opportunity to support themselves while they remain in the United States. Other advocates have argued for the creation of legal vehicles including humanitarian visas that would allow imperiled children with family in the United States to travel legally to the United States.⁴⁸

2. ABA Response: Past and Present

Establishment of ABA Working Group on Unaccompanied Minor Immigrants

In response to the increasingly compelling humanitarian situation occurring at the southwest border, in July 2014, the Commission on Immigration organized a tour for its members and ABA leadership to the Lackland Air Force Base in San Antonio, Texas, where 1,200 children were being held and processed for reunification.⁴⁹ ABA President William Hubbard and Past-President James R. Silkenat joined Commission Chair Christina Fiflis, Commission Director Meredith Linsky and thirteen others to visit this emergency facility as well as several traditional children's shelters and the San Antonio Immigration Court. Subsequently, in August 2014, President William Hubbard established a Working Group on Unaccompanied Minor Immigrants to address the urgent crisis presented by these children and to

⁴⁵ See United Nations High Commissioner for Refugees, *Children on the Run*, Mar. 2014, available [here](#).

⁴⁶ 8 U.S.C. § 1158(b)(1).

⁴⁷ 8 U.S. C. § 1254a(b)(1).

⁴⁸ Donald Kerwin, *Why the Central American Child Migrants Need Full Adjudication of Their Protection Claims*, The Huffington Post, July 19, 2014, available [here](#).

⁴⁹ As of August 2014, this facility is no longer being used to detain unaccompanied children.

mobilize the full resources, talent and experience of ABA members to meet this challenge. The Working Group is comprised of ABA members representing a broad cross-section of ABA sections, divisions, committees and commissions who are working to address this crisis. The Working Group is tasked with developing and implementing an immediate response to the need for trained lawyers to take on these immigration cases on a pro bono basis, as well as developing a collaborative and effective plan for how the ABA can contribute to coordination of the efforts among the various entities already committed to this issue and developing new service opportunities and resources as needed.

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

In 1989, the ABA, in collaboration with the State Bar of Texas (SBOT) and the American Immigration Lawyers Association (AILA), 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, the ABA, SBOT and AILA 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 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 2014, ProBAR served 10,403 detained unaccompanied children and 1,981 detained adults. In 2011, there were 369 beds for unaccompanied children in the Rio Grande Valley and each child was 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. ProBAR is charged with providing “Know Your Rights” presentations to detained children and adults, individual screenings and pro bono representation and referrals for those with identifiable relief. Approximately 90% of the children will be reunified with family or friends in the United States pending their hearings, but they must return to immigration court and defend against a removal order. They travel all over the United States in order to reunify and according to the government, 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.

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. IJP does not focus specifically on unaccompanied children, but does specialize in representing detainees with diminished mental capacity, asylum-seekers and others.

ProBAR “Know Your Rights” and Screening Video

The Commission, through the ProBAR project, has produced multiple training videos for attorneys and paralegals who are serving unaccompanied children in the initial detention setting. Currently there are approximately 100 shelters and foster care programs around the country with a total capacity of 7,284 beds where ORR holds children who are being processed for reunification. ProBAR staff members have years of experience providing specialized “Know Your Rights” presentations and screening services to detained children. In 2014, ProBAR staff filmed four videos related to working with Central American children. These videos are currently available at the Commission on Immigration website.⁵⁰

ABA Advocacy Efforts

Additionally, the ABA is engaged in advocacy efforts with the Administration and Congress. The ABA has adopted numerous 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.

On June 25th, 2014, Past President Silkenat submitted a [statement](#) to the Judiciary Committee of the U.S. House of Representatives regarding the surge of unaccompanied children.

On March 26, 2015, President William Hubbard sent a [letter](#) to DHS Secretary Jeh Johnson expressing concern about expansion of immigration detention, including detention of women and children seeking protection as refugees.

GPSolo/KIND Pro Bono Training Sessions

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.

⁵⁰ The training videos are available [here](#).

Since starting in 2011, the ABA-KIND partnership has trained 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 is 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 to Represent an Unaccompanied Child through the ABA Immigrant Child Assistance Network

If you would like to help by representing a child who is currently in removal proceedings, you can enroll at the ABA website at: www.ambar.org/ican. Attorneys who register will be matched with a legal service provider in their geographical area to be paired with a child client. Training videos and other resources are available at this site and at the ABA partner site www.UACresources.org.

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

ProBAR is in the process of hiring additional attorneys and paralegals for temporary and permanent assignments. If you or someone you know might be interested in a position, contact Kimi Jackson or Meghan Johnson listed below. At this time, ProBAR's Children's Project can only accept volunteers who are proficient in Spanish, can commit to staying at least one month and are available to help screen and represent children at one of the 15 shelters in the area. To contact ProBAR you may e-mail the Director, Kimi Jackson at kimi.jackson@abaprobar.org or the Manager of the Children's Project, Meghan Johnson at meghan.johnson@abaprobar.org. For more information visit ProBAR's Children's project website link: www.ambar.org/probarchildren.

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 Trainings on Representing Unaccompanied Minors Presented Throughout the Country

For a list of upcoming live trainings see the "Training" link at the Unaccompanied Children Resource Center website [here](#). You can watch a six-part training entitled "The ABCs of Representing Unaccompanied Children in Removal Proceedings" at the Commission website [here](#).

Volunteer to Represent Detained Families with the CARA Family Detention Pro Bono Project in San Antonio, Texas

Four organizations have recently come together to develop a pro bono program to provide representation to families detained by ICE in South Texas at the Dilley and Karnes family residential centers. These organizations include the Catholic Legal Immigration Network, American Immigration Council, Refugee and Immigrant Center for Education and Legal Services and American Immigration Lawyers Association. The project asks volunteers to commit to a week-long stay from Sunday through Friday. They are currently seeking volunteer attorneys through September 2015. For more information on this program click [here](#).

Donate Toward Social Service Efforts

If you would like to donate toward serving those who have been released you can review 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.

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/>

Share Your Ideas

The Commission and the Working Group are interested in working collaboratively with ABA entities and other stakeholders. Please feel free to contact us with your ideas and plans to address this compelling situation.

For more information, contact:

Christina Fflis, Chair, ABA Commission on Immigration, christinafflis@me.com

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

Mary Ryan and Christina Fflis, Co-Chairs, Working Group on Unaccompanied Minor Immigrants,
christinafflis@me.com; MRyan@nutter.com.