



Governmental Affairs
Office

Statement of
JAMES R. SILKENAT
President
on behalf of the
AMERICAN BAR ASSOCIATION
for the record of the hearing on
“An Administration Made Disaster: The South Texas Border
Surge of Unaccompanied Alien Minors”
before the
Committee on the Judiciary
of the
U.S. HOUSE OF REPRESENTATIVES
June 25, 2014

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Chairman Goodlatte, Ranking Member Conyers and Members of the Committee:

On behalf of the American Bar Association (ABA), I submit this statement for the Committee's June 25, 2014 hearing addressing the recent surge of unaccompanied alien children entering the United States through our southern border.

The American Bar Association is one of the world's largest voluntary professional organizations, with a membership of nearly 400,000 lawyers, judges, and law students worldwide. The ABA continuously works to improve the American system of justice and to advance the rule of law both domestically and around the world. Through its Commission on Immigration, the ABA advocates for improvements in immigration law and policy; provides continuing education to the legal community, judges, and the public; and develops and assists in the operation of pro bono legal representation programs.

In 1989, the ABA established the South Texas Pro Bono Asylum Representation Project (ProBAR), largely in response to the influx of asylum-seekers into South Texas at that time who were fleeing civil war and violence in Central America—conditions similar to what we are experiencing today on the southwest border. ProBAR staff and volunteers provide legal rights presentations and pro bono representation to indigent, detained immigrants and asylum-seekers held in facilities throughout the Rio Grande Valley.

ProBAR established its Immigrant Children's Assistance Project in 2003. The Children's Project currently serves more than 1,500 detained, unaccompanied children at shelters in South Texas by providing them with "Know Your Rights" presentations, individual screenings and pro bono legal representation. ProBAR is located in Harlingen, Texas, in the heart of the Rio Grande Valley, where the majority of unaccompanied children are apprehended by Customs and Border Protection.

As you know, the number of children being apprehended by the authorities has increased more than ten-fold over the past three years, from approximately 6,500 in 2011 to a projected number of over 90,000 in 2014. In 2013, ProBAR provided "Know Your Rights" presentations and individual legal screenings to 6,500 unaccompanied children held in federally funded detention centers, up from 3,200 the previous year. From January through April 2014, ProBAR provided these same legal rights presentations to 3,986 children, almost doubling from the previous year.

ProBAR attorneys and paralegals interact daily with children of all ages held in detention centers funded by the U.S. Department of Health and Human Services. These boys and girls come mainly from Honduras, El Salvador, and Guatemala and range in age from toddlers to 17 years old. They include pregnant and mothering teens, and although the majority of these children tend to be teenage boys between the ages of 15 to 17, the number of unaccompanied girls and young children is steadily increasing. Children travel to the United States on their own, in groups led by human smugglers, and with extended family members and friends.

The reasons that children immigrate to the United States are often complex and multifaceted. Children express both push and pull factors that cause them to leave their home countries and seek protection, opportunity, and family reunification in the United States. Reasons include escaping from abuse and very real threats by powerful and violent street gangs, including the 18th Street gang and the Mara Salvatrucha gang. These gangs frequently engage in forced recruitment of teenage boys, sexual slavery of teenage girls, and targeted extortion efforts, often focusing on children with parents and extended family members in the United States. The gangs are terrifying and relentless in their efforts to exact compliance. A more recent phenomenon, children are fleeing these countries due to threats by multinational drug trafficking organizations, demanding that children act as drug mules or look-outs for illicit cartel activities. Furthermore, many of the children ProBAR represents have been abandoned, abused, or neglected in their home countries by parents or by extended family members. In most cases involving children, there are multiple factors that fuel the decision to migrate to the United States; however there is no question that the increasing violence and lawlessness in El Salvador, Guatemala, and Honduras is a major cause of the recent influx.

Once children are apprehended by Border Patrol agents, they are transported by Customs and Border Protection (CBP) to processing stations where they are held in crowded holding cells. Children are supposed to be held for no more than 72 hours in these cells, but with the recent surge, they often remain for a week or longer, being transferred from one station to another, sleeping on the cold concrete floor, in unsanitary conditions, with inadequate food and water. Some children report being treated with aggression by Border Patrol agents, being pushed, shoved, or kicked upon arrest. Other children report being denied food, medical care, and medication. While we understand the pressures on the system caused by the recent surge in numbers, children should be held in CBP short-term custody cells for as short a time as possible, and in no circumstance longer than 72 hours. Furthermore, CBP must ensure that they are held in appropriate conditions with access to all basic services.

After children are processed at the CBP stations, they await placement at a shelter sponsored by the Office of Refugee Resettlement. Once arriving at the shelter the children are finally able to meet their basic needs by showering, eating a hot meal and accessing medical, psychological and legal services. Within a few days, the shelter caseworkers will begin to determine whether it is possible to reunify the child with a family member or other adult sponsor. The speed of reunification has increased significantly over the last year, and this has resulted in some children being reunified without the essential “Know Your Rights” presentation and the individual screening service.

It is critical that legal service providers have the time to provide basic legal information and to screen children before they are reunified with qualified sponsors. Otherwise, children who are at a heightened risk if returned to their countries and who may qualify for legal relief may never have the opportunity to access critically needed legal services. The ABA recommends that all children receive a live, in-person legal rights presentation and an individual, child-friendly screening by a qualified legal advocate before being reunified with approved sponsors.

Simply reaching the United States does not guarantee that an unaccompanied child will be allowed to remain in the country. Children who enter the United States without authorization are immediately issued a “Notice to Appear,” the charging document that initiates removal proceedings. These children will be required to appear before an Immigration Judge in adversarial proceedings to defend against removal. Unaccompanied children have no right to appointed counsel in removal proceedings or to additional protections, like a Guardian ad Litem, that are standard in other U.S. legal proceedings involving children. While a recent report of the United Nations High Commissioner on Refugees found that 58% of these children present legitimate legal protection concerns, qualifying for immigration relief is difficult under our current legal framework. Children may be eligible to apply for political asylum, Special Immigrant Juvenile status, T or U visas, or other forms of relief, but these cases are very complex and only a small percentage of children will actually be granted relief. Children who are not granted relief will be ordered to return to their countries of origin, often through removal orders.

For many reasons, it is critical that these children have legal representation throughout the immigration process. Due to their age, lack of education, language and cultural barriers, and the complexity of U.S. immigration law, these children face often insurmountable obstacles to proving their claims for protection before an Immigration Judge or asylum officer on their own. The majority of these children are not in a position to determine on their own whether they might qualify for legal relief. In fact, on their own, they may not be able to understand the nature of, much less be able to meaningfully participate in, their immigration proceedings.

Fundamental principles of fairness and due process demand that these vulnerable children receive legal representation and guardians to represent their interests throughout the immigration process. Additionally, legal representation often improves the efficiency of the court process and may help ensure that a child and his or her sponsor understand the responsibility to appear for proceedings and to abide by the decision of the court. While pro bono representation should be encouraged and utilized to the maximum extent possible, it cannot meet the need in all cases, particularly for those who are detained in remote border areas. Therefore, the ABA strongly recommends that government-appointed counsel be provided for children who are not otherwise able to obtain legal representation.

For those children who receive orders of removal, the repatriation process must be completed in a manner that ensures their safety and successful reintegration in the home country. The ABA recommends that repatriations of such children include formal intercountry child welfare agency involvement and adherence to intercountry protocols designed to address concerns regarding the safety of the child during the repatriation process and the process of returning the child to a stable environment. These actions will not only help to protect these children, but may also be critical to help prevent them from attempting to migrate again.

The disturbing reality for many of these children is that a life-threatening trip northward to the United States appears less risky than remaining in their home country, where many would continue to live in broken homes, subject to abject poverty, and at risk from criminal gangs and

cartels that have overrun their communities. Until there is stability, rule of law and economic opportunity in Central America and Mexico, the current migration patterns likely will continue.

There is no question that the rapid increase in unaccompanied children entering our country presents many difficult challenges. However, in the rush to address the current crisis, the United States cannot abandon the principles of fairness and due process that make this country a beacon a light and hope for those suffering persecution around the world. Any short- or long-term solutions designed to address the influx of children must bear this ideal firmly in mind.

We appreciate the opportunity to provide this statement to the Committee and stand ready to assist the Committee in addressing the challenging problems raised by the entry across our border of unprecedented numbers of unaccompanied alien children.