

Recommendations for Protecting Unaccompanied Immigrant and Refugee Children

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Every year, federal immigration officials apprehend thousands of unaccompanied alien children (UACs), many of whom have arrived to the United States after having experienced trafficking, persecution, abuse or neglect, and other major trauma or violence. While the vast majority of them are from Mexico and are repatriated soon after apprehension with minimal screening for immigration relief, about 8,000 are taken into government custody annually pending their immigration removal proceedings.

The passage of the Homeland Security Act of 2002 (HSA)¹ transferred the custody and care of UACs from the legacy Immigration and Naturalization Service to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), an agency with child welfare expertise. In doing so, the HSA separated key duties into two different agencies: DHS was given responsibility for enforcing immigration law and HHS was given responsibility for the care and custody of children.

ORR has made great strides in improving the treatment of UACs, but the Division of Unaccompanied Children Services (DUCS) still faces a number of deficiencies when measured against standard child welfare principles. Importantly, the DUCS program lacks effective mechanisms to identify and address non-compliance with DUCS procedures, incidents within facilities, and individual complaints. To address longstanding concerns about the processing of UACs in a number of areas, some critical reforms were included in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008² (TVPRA), which became law in December 2008. Some of these fundamental protections include: safety protocols when repatriating children; improved guidelines for custodial placements; better assessments and services while in custody; and enhanced legal protections and eligibility for relief. Even with these improvements, the new administration should take these steps to ensure the effective implementation of the law and make the following needed changes:

- Within two months of taking office, direct DHS, HHS, the Department of Justice and the Department of State to collaborate on an interagency basis with key stakeholders including NGOs and UNHCR to implement the TVPRA.³
- Immediately request sufficient funds to fully implement the TVPRA in FY09 and FY10, particularly in areas such as home studies, assessments and follow-up services, legal orientation programs for sponsors, placements, state foster care reimbursements, trainings, appointment of child advocates, utilization of pro bono counsel and repatriation and reintegration services.
- Adopt a policy that ensures information gained by HHS in the course of providing care, custody and placement of UACs is used only in the children's best interests and is not shared with other government agencies for the purpose of using such information to deny UACs benefits, services or legal relief in immigration proceedings or to re-detain UACs along with their family members.
- Clarify the definition of unaccompanied alien child so that no children remain in DHS custody for more than 72 hours unless in the physical company of their parents.
- Appoint an independent agency or organization with expertise in child welfare service delivery to conduct an analysis of the DUCS program, service components and structure and issue recommendations for a model that brings it into line with recognized child welfare practices by the end of 2009.
- By August 2009, create an independent entity in HHS empowered to receive and investigate individual grievances, including, but not-limited to complaints of abuse of UACs or other malfeasance as well as to ensure overall DUCS program accountability and performance.

¹ Public Law No: 107-296

² Public Law No: 110-457

³ § Sec. 235(h)(1) of Public Law No: 110-457 requires that Section 235 be implemented by March 23, 2009.