



**Women's Refugee Commission**  
Research. Rethink. Resolve.



# Forced From Home:

The Lost Boys and Girls of Central America

October 2012



WOMEN'S  
REFUGEE  
COMMISSION

## Research. Rethink. Resolve.

Since 1989, the Women's Refugee Commission has advocated vigorously for policies and programs to improve the lives of refugee and displaced women, children and young people, including those seeking asylum—bringing about lasting, measurable change.

The Women's Refugee Commission is legally part of the International Rescue Committee (IRC), a non-profit 501(c) (3) organization, but does not receive direct financial support from the IRC.

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## Acronyms and Abbreviations

ACF	Department of Health and Human Services' Administration for Children and Families
BP	Customs and Border Protection's Border Patrol, charged with patrolling the U.S. border between ports of entry and enforcing U.S. immigration and customs laws.
CBP	Customs and Border Protection
DCS	Division of Children's Services, formerly Division of Unaccompanied Children's Services
DHS	Department of Homeland Security
DIF	Desarrollo Integral de la Familia, Mexico's child welfare agency
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
GAL	Guardian ad litem
HHS	Department of Health and Human Services
HSA	Homeland Security Act of 2002
ICE	Immigration and Customs Enforcement (Division of Homeland Security)
IES	International Education Services
INA	Immigration and Nationality Act
JFRMU	Juvenile and Family Residential Management Unit (Division of ICE)
KYR	Know Your Rights
LOPC	Legal Orientation Program for Custodians (of UACs)
NTA	Notice to Appear
OFO	Customs and Border Protection's Office of Field Operations, charged with enforcing customs and immigration laws at U.S. ports of entry.
OMB	White House Office of Management and Budget
ORR	Office of Refugee Resettlement
OTM	Other than Mexican
POE	Ports of Entry are official entries into the U.S. where U.S. government officials and customs agents check official entry documents.
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UNHCR	United Nations High Commissioner for Refugees

## Glossary

FFS	DCS Federal Field Specialists, located regionally, provide supervision of UAC placement, transfers and release to sponsors.
DCS Guidelines	DCS Policies and Procedures (formerly the Division for Unaccompanied Children's Services)
Emergency Shelter	Emergency shelters are not temporary DCS programs, but long-term contracted facilities that typically house a hundred or more children (especially along the border).
Family Reunification	Process in which DCS places UACs with sponsors during the duration of their immigration court proceedings. Sponsors may be parents, other family members, or non-family members designated by the family.
Flores Settlement	Flores v. Reno Settlement Agreement
Flores Attorneys	Attorneys who participated in and receive the privileges outlined in the Flores Settlement Agreement
Influx	Defined in the <i>Flores Settlement</i> in section 12(B) as referring to larger numbers of children who are awaiting placement. See Appendix E.
Release	Discharge from ORR custody (immigration custody for children) to a sponsor who cares for the UAC for the duration of the removal proceedings. Release does not terminate removal proceedings.
Surge	Facility or program opened solely for the purpose to provide short-term emergency shelter for UACs due to an unexpected influx. These programs had short-term licenses for 30 or 60 days.
UAC	Unaccompanied Alien Child defined in the Homeland Security Act, 6 U.S.C. § 279(g): <ol style="list-style-type: none"><li>1) Has no lawful immigration status in the U.S.; AND</li><li>2) Has not attained 18 years of age; AND</li><li>3) No parent or legal guardian in the U.S. OR</li><li>4) No parent or legal guardian in the U.S. available to provide care and physical custody.</li></ol>

## The Women's Refugee Commission's Detention and Asylum Program

The Detention and Asylum Program conducts research and policy advocacy on migrant rights and justice:

- **Family Unity:** Our report *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* was the first report to highlight the problem of parents losing their rights to their children because of immigration enforcement, detention and removal. The Women's Refugee Commission (WRC) has done extensive research, advocacy and training on this issue. Our work has contributed to key policy changes. Resources for parents, child welfare professionals and immigration attorneys are in development.
- **Women in Detention:** WRC has long advocated for protections, access to justice and due process for women and other vulnerable migrants in detention, ensuring that they have access to appropriate medical care, advocating for meaningful protection and recourse for victims of sexual assault and encouraging release and the use of alternatives to detention.
- **Reform and Alternatives to Detention:** WRC has been at the forefront in policy and legislative reform for migrants seeking protection, advocating for the use of immigration detention only as a case of last resort and advocating for stronger and more meaningful transparency, oversight and accountability mechanisms in U.S. immigration detention, including expanded access to detention facilities for independent oversight. WRC and its partners have also been instrumental in advocating for a wide variety of alternatives to detention and stronger screening measures to promote the release of migrants into the community or support programs instead of unnecessary and costly immigration detention.
- **Border Rights:** WRC works to protect women and children migrants and to preserve family unity along the U.S. border. Together with organizations and coalitions both in Washington, D.C., and along the border, we advocate locally, nationally and internationally to ensure that U.S. officials respect the rights of migrants, implement meaningful screening practices for vulnerable populations and hold accountable those officers who violate U.S. and international law.
- **Unaccompanied Children's Project:** For over a decade, WRC has advocated for the rights and best interests of unaccompanied minors both in and out of federal immigration custody. We continue to monitor conditions and recommend policies that align with international human rights standards.
- **International Human Rights:** WRC continues to work closely with international partners and with United Nations bodies to protect vulnerable migrants from unnecessary detention.

## Executive Summary

### Increased Migration of Unaccompanied Children to the United States

Beginning as early as October 2011, an unprecedented increase in the number of unaccompanied alien children (UACs) from the Central American countries of Guatemala, El Salvador and Honduras began migrating to the United States. During the first six months of fiscal year 2012, U.S. immigration agents apprehended almost double the number of children apprehended in previous years. The Department of Health and Human Service's (HHS) Office of Refugee Resettlement (ORR), the agency tasked with the care and custody of these children, had a record number of 10,005 in its care by April 2012.

In June 2012, the Women's Refugee Commission (WRC) conducted field and desk research to look into possible reasons for the influx in the number of children migrating alone, and the government's response, including conditions and policies affecting unaccompanied children. The WRC interviewed 151 detained children and met with government agencies tasked with responding to this influx, including the Department of Homeland Security's (DHS) Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), ORR and the Department of Justice's Executive Office of Immigration Review (DOJ/EOIR), as well as country experts, local service providers and facility staff. Our recommendations include both legislative and administrative solutions for the protection of UACs.

### Lost Boys and Girls of Central America

Most of the children who have been apprehended as part of this influx are from three countries in Central America: Guatemala (35%), El Salvador (27%) and Honduras (25%). The majority of the children the WRC interviewed said that their flight northward had been

necessitated by the dramatic and recent increases in violence and poverty in their home countries. The WRC's independent research on the conditions in these countries corroborated the children's reports. These increasingly desperate conditions reflect the culmination of several longstanding trends in Central America, including rising crime, systemic state corruption and entrenched economic inequality.

Children from Guatemala, Honduras and El Salvador cited the growing influence of youth gangs and drug cartels as their primary reason for leaving. Not only are they subject to violent attacks by the gangs, they explained, they are also targeted by police, who assume out of hand that all children are gang-affiliated. Girls also face gender-based violence, as rape becomes increasingly a tool of control. Children from Guatemala cited rising poverty, poor harvests and continuing unemployment as reasons for migrating. Almost all of the children's migration arose out of longstanding, complex problems in their home countries – problems that have no easy or short-term solutions.

The title of this report, "The Lost Boys and Girls of Central America," reflects that violence in Central America is generating "lost" children. Until conditions for children in these countries change substantially, we expect this trend will be the new norm.

### U.S. Government Response to the Influx

In response to this influx, ORR worked around the clock to open several emergency surge shelters to move children out of CBP holding facilities where they are initially held upon apprehension for periods not to exceed 72 hours. While waiting to be placed in a longer-term ORR facility, children were held for up to two weeks in CBP short-term hold facilities. These facilities are not designed for long-term detention or to hold children. The lights stay on 24 hours a day, and there are no showers or recreation spaces. During the influx, they were sometimes so overcrowded that children had to take turns just to lie down on the concrete floor. Advocates also became concerned that ORR was operating



in triage mode and as a result the protection and due process needs of children were not being adequately addressed. The WRC discovered many children stayed in temporary shelters with little to no access to Know Your Rights presentations and legal screening. The WRC also discovered other resource and oversight gaps with DHS, HHS and the Department of Justice's Executive Office of Immigration Review (EOIR) that in turn affected the protection and rights of UACs. The following key recommendations seek to address many of these identified gaps.

### Key Recommendations for U.S. Response

The following recommendations seek to address the resource gaps that resulted in many of the problems found during the WRC's fact-finding trip. The increase in UACs also exacerbated structural and procedural problems within HHS, DHS and DOJ. To rectify these problems, the relevant federal agencies and the Administration must request the necessary funding in their budget submissions to Congress. These federal agencies will need the support of Congress and the White House to implement reforms that address these systemic problems and appropriate the necessary funding. The current requirement that HHS place a certain number of detention beds near the U.S.-Mexico border does not necessarily ease the transportation burden of ICE. The White House should support the agencies as they determine a more cost-effective way to transport and detain these children without compromising the protection needs of children. Federal agencies working domestically and abroad, must adopt new policies that ensure protection for vulnerable children. Current policies should be reviewed for their disparate impact on children.

#### 1. Recommendations Related to Health and Human Services:

- Appropriations for HHS must account for the increase numbers of UACs in ORR custody and for emergency influxes. Funding should factor in the need for all social services and access to legal orientation/screening

in custody and post-release. (See Recommendations 1.1 and 1.7 through 1.12 in Part 2.)

- HHS/DCS should expand its use of alternatives to detention, such as foster families and foster group homes, and stop clustering facilities near the border where resources are scarce and trafficking risks high. Instead, HHS should work to open foster homes and facilities in "hub" areas located near services for children and in locations of highest release of the children. HHS should convert existing shelters on the border into short-term "reception" or "transition" centers. (See Recommendation 1.2.)
- ORR and DCS must ensure there is adequate oversight and monitoring. Staffing resources must increase as the number of UACs in custody increases. HHS should provide support accordingly. (See Recommendations 1.3 through 1.6.)
- DCS should also provide additional resources for post-release social services and legal services. Children should not be put at risk due to gaps in post-release services. (See Recommendations 1.7 through 1.12.)

#### 2. Recommendations Related to Department of Homeland Security:

- CBP should develop an emergency response plan for times of large influxes to meet the needs of vulnerable populations who may stay in the care for longer periods than 72 hours. CBP should institutionalize some best practices in caring for the children, taking into the account international and domestic child protection standards. (See Recommendation 2.1.)
- CBP must ensure the basic human rights and due process of UACs in their custody. DHS should institute a zero tolerance policy towards agents who commit human and civil rights abuses and put mechanisms in place so victims can safely report. Transparency and independent access to facilities for oversight and monitoring purposes is essential. (See Recommendations 2.1 through 2.3.)





CBP Office of Field Operations staff describe this as a “child-friendly holding cell.” Tucson, Arizona.

## Overview

### Historical Background<sup>1</sup>

Each year, thousands of unaccompanied alien children (UACs)<sup>2</sup> risk harrowing journeys and travel alone to seek refuge in the United States. These children come from all over the world for many reasons, including to escape persecution in their home countries, to reunify with family members and to look for a better life. In recent years, the U.S. government has had roughly 6,000-8,000 of these children in its care and custody each year.<sup>3</sup> While these children may be as young as infants, most (approximately 70 percent) have been between the ages of 15 and 17.<sup>4</sup> The vast majority of children in immigration proceedings are apprehended at the border by Customs Border Protection (CBP)<sup>5</sup> as they try to enter the country. Others are apprehended in the interior of the U.S. by Immigration and Customs Enforcement (ICE).<sup>6</sup>

With the Homeland Security Act of 2002 (HSA), Congress transferred the custodial authority of UACs to the federal agency with child welfare expertise, the Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR).<sup>7</sup> After apprehension and processing, unaccompanied children are transferred to the Office of Refugee Resettlement. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) further enhanced protections for UACs.<sup>8</sup> The HSA and the TVPRA provide for both short-term and long-term detention and custody of UACs because of their status as unaccompanied minors and due to their special vulnerabilities. The protection of children who are apprehended alone or without appropriate caregivers is the responsibility of the U.S. government. Until parents, legal guardians or other appropriate caregivers are located, these children remain in the custody of ORR while their legal case is pending.

The TVPRA mandates the limit of CBP’s custody of UACs (from noncontiguous countries) to 72 hours,

- CBP and ICE should use independent organizations/contractors to monitor treatment of children in short-term hold rooms, conduct screening under the TVPRA and transport UACs. (See Recommendations 2.4, 2.5 and 2.7.)

### Recommendations Related to the Department of Justice:

- DOJ should provide the Legal Orientation Program for Custodians (LOPC) with sufficient resources to adequately serve the increased number of custodians needing information. (See Recommendation 3.1.)
- DOJ should ensure each EOIR Immigration Court has a juvenile docket with appropriate resources. DOJ should require each EOIR courthouse to lend space to LOPC grantees, non-profit legal service providers and Guardian Ad Litem/Child Advocate programs to conduct presentations and interviews for UACs and their sponsors. (See Recommendation 3.3.)
- All children should be guaranteed legal counsel in removal proceedings. (See Recommendation 3.4.)

unless there are “exceptional circumstances,” at which time they are to be transferred to ORR.<sup>9</sup> For children from the contiguous states of Mexico and Canada, the TVPRA also requires CBP to screen children to determine whether they have been trafficked, fear persecution and can make an independent decision to return to Mexico (or Canada).<sup>10</sup>

### The New Trend—An Unprecedented Increase in UACs

In October 2011, the Division of Children’s Services (DCS), the part of ORR tasked with the custody of UACs, began receiving into its custody an unprecedented number of UACs. The need for placements nearly doubled between October 2011 and June 2012. By April 2012, DCS had already surpassed the total number of UACs detained for the entire fiscal year 2011<sup>11</sup> and a new record was set in June 2012, with DCS having had 10,005 unaccompanied children in its care since the beginning of the fiscal year. The overwhelming majority of these children come from the Central American countries of Guatemala, Honduras and El Salvador. Children are fleeing from these countries in significantly higher numbers than ever before. During the same period, the numbers of Mexican children being apprehended only increased slightly and the total numbers of entries (children and adults) from Mexico decreased significantly.<sup>12</sup> (See Chart 6.)

This increase in the apprehension and placement of unaccompanied children from Central America caught all involved stakeholders by surprise. As a result of this unexpected “influx,”<sup>13</sup> DCS staff worked around the clock to open “surge” shelters to house the children. Because DCS did not initially have enough detention beds or placements, those children apprehended by CBP were held for up to two weeks in overcrowded short-term holding cells run by the DHS until ORR beds became available. Without additional resources, DCS began operating in triage mode and advocates became concerned that the protection and due process needs of children were not being adequately addressed. Ad-

vocates and the media also began to speculate about why there was such an increase in UACs. In response to these concerns, the WRC made a fact-finding trip in early June 2012 with the following objectives:

- 1) To discover why so many children from Central America were coming to the U.S. and whether this was a short- or long-term trend.
- 2) To review policies, identify gaps and make recommendations to improve the care and custody should this large number of UACs prove to be a new norm.

The WRC interviewed 151 children and met with government agencies tasked with responding to this influx of children, including CBP, ICE, ORR and EOIR, and staff at the facilities holding these children, as well as nongovernmental legal service providers. Findings and recommendations in this report are a result of these interviews, consultations, data collection and research.

The children interviewed in DCS custody described conditions of abject poverty coupled with rapidly escalating gang violence in Guatemala, El Salvador and Honduras. These children exhibited both an urgent need to escape and an incredible will to survive. Most of them expressed a “necessity” for leaving their home, indicating more “push” than “pull” factors for their decisions to migrate. All of them are looking to the United States for refuge and hope for a future. We named this report *Forced from Home: Lost Boys and Girls of Central America* as a follow-up to our extensive report on unaccompanied children, *Halfway Home: Unaccompanied Children in Immigration Custody*,<sup>14</sup> and to stress that violence in Central America is generating “lost” children.<sup>15</sup> Until conditions for children in these countries change substantially, it is expected that this trend will become the new norm.<sup>15</sup>

### 16-year-old boy forced from school by gangs

Mario,\* age 16, told us the following story: He was a student in San Pedro Sula, Honduras, one of the most violent cities in the world. He said he had no choice but to stay home from school after he was targeted for recruitment by one of the gangs that dominate many state-run schools in Honduras. When he told the gang members, “No, I’m good,” they left him alone for a little while. Then one girl started saying he had to join and incited other gang members who threatened physical violence. Because it was no longer safe enough to go to school in his home town and he could not afford private school in Honduras, he came to the U.S., where he hoped he would have the opportunity to work and study.

*Individual interview at Baptist Child and Family Services Lackland Air Force Base surge center.*

*\* Names have been changed throughout the report to protect the identities of the children.*

## Methodology

The primary research objective of this assessment was to interview UACs and ascertain their reasons for migrating to the United States and their experiences in custody. This was done by conducting five individual interviews and 14 focus group discussions with 146 UACs aged 10 to 17 in federal custody. The WRC also interviewed those in charge of placement operations and of the care and custody of UACs; DCS’s local Federal Field Supervisors (FFSs); and facility staff. Twelve service providers (both legal and social) across the country were also consulted. The WRC gathered data, discussed findings, and shared drafts of the report with policy makers within HHS, DHS<sup>17</sup> and DOJ. For country condition research, WRC conducted seven interviews with country experts in the field and reviewed human rights reports and articles by NGOs, UN bodies and journalists. For the purposes of this report, the WRC did not look at what happens to children if or when they are removed from the United States or explore the policies or practice of UAC repatriations. The WRC also did not focus on children’s

individualized cases or asylum claims.

In addition to the TVPRA and Flores Settlement, the standards used in the assessment of the care and custody of UACs include both international human rights and domestic child welfare laws and policies. Specifically, the WRC looks to ensure the best interests of the child and the child’s rights and voice are effectively incorporated in practice and policy. For more information on the international and domestic child welfare standards considered, see Appendix A.

For additional information on the questions and focus group participants and government respondents, see Appendices B and C.

### Limitations

The WRC interviewed a limited number of children. Findings are limited to what we heard from these 151 children, and cannot be generalized to the 18,000 children who have been apprehended by Customs and Border Protection in FY 2012 or the children in ORR custody. In addition, the children interviewed do not represent a random sample, as the WRC was not able to access all facilities and CBP did not permit any interviewing of children in its custody.

The WRC chose participants according to the location of the largest emergency surge shelter programs. In order to understand the unique gender-based asylum claims of girls, the WRC interviewed older girls who were in foster care programs because that is where mothers or expectant mothers are placed. The WRC had also previously interviewed children in ORR custody in October of 2011 in the Harlingen/Brownsville area. In most locations, the WRC interviewed almost all children who volunteered. Children at Lackland Air Force Base were interviewed just weeks before the facility closed. Because children were interviewed as the “surge” placements were terminating, many of the children at the Lackland Air Force Base were there for shorter periods and were receiving additional legal services to what children had received there in the early months.

## Part 1: Lost Boys and Girls of Central America

The data collected on UACs reveals that the numbers of children arriving from key Central American countries has gone up (see Charts 1 and 2). In contrast, the number of unaccompanied Mexican children in ORR

has gone down (see Chart 1).<sup>18</sup> The children's voices and country condition research affirm that violence targeting children in particular is reaching a crisis level in Central America and forcing these children from their homes, children who were suddenly faced with the difficult choice of coming to the United States alone and at a young age.

**CHART 1<sup>19</sup>**

**Yearly Country Comparison of UACs:  
ORR/DCS Referred Placements FY 07 - FY 12**

Country of Origin	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012 *
EL SALVADOR	1,995	1,600	1,528	2,157	1,622	2,724
GUATEMALA	2,115	1,844	1,674	1,932	2,051	3,518
HONDURAS	2,091	1,981	1,378	1,277	1,201	2,477
MEXICO	678	711	1,067	1,490	1,392	865
NICARAGUA	79	48	29	40	18	31
OTHER	439	474	416	1,314	570	390
<b>Total Referred</b>	<b>7,397</b>	<b>6,658</b>	<b>6,092</b>	<b>8,210</b>	<b>6,854</b>	<b>10,005</b>

\* Oct 1 - June 30

**CHART 2<sup>20</sup>**

**Yearly Apprehension Totals of UACs  
by CBP's Border Patrol (BP) and Office of Field Operations (OFO)**

Nationality of UAC	FY 2010		FY 2011		FY 2012	
	BP	OFO	BP	OFO	BP*	OFO**
EL SALVADOR	1,910	Unavailable	1,394	58	2,009	100
GUATEMALA	1,517	Unavailable	1,565	42	2,444	63
HONDURAS	1,017	Unavailable	974	25	1,652	70
MEXICO	13,724	Unavailable	11,768	1,231	9,603	1,426
OTHER	2,684	Unavailable	355	363	242	399
<b>Totals</b>	<b>18,634</b>		<b>16,056</b>	<b>1,719</b>	<b>15,950</b>	<b>2,058</b>

\* Oct 1 - May 31; \*\* Oct 1 - July 31



## Children's Voices

*In El Salvador, there is a wrong—it's being young.*

*You're stalked by gangs, authorities beat and follow kids because they don't trust them; they think they're gang members. There are no jobs for young people because employers don't trust the kids either...*

*It is better to be old.*

Carlos<sup>21</sup>

### Forced From Home

The WRC's findings indicate that the surge in unaccompanied Central American children crossing the U.S.-Mexico border is not a short-term anomaly that will be resolved with short-term solutions. The majority



A child's drawing of their home, BCFS at Lackland Air Force base, June 8, 2012. It says, "I am sad [pointing to face]. I miss my home."

of the children interviewed stated that their flight northward had been necessitated by the increasingly desperate conditions of extreme violence and poverty in their home countries. Over 77 percent of the 151 participants the WRC interviewed stated violence was the main reason more children were fleeing their countries.

The conditions in Central America have deteriorated to such a point that, when the WRC asked the children if they would risk the dangerous journey north through Mexico all over again now that they had direct knowledge of its risks, most replied that they would. They said that staying in their country would guarantee death, and that making the dangerous journey would at least give them a chance to survive. Many of them expressed a longing for their homelands, stating that they would not have left but for fear for their lives.

#### Girls flee after witnessing horrors

One girl said she was scared to take public transportation because Honduran gangs are burning buses full of people if the driver doesn't pay "protection money." She said gangs also regularly burn jails and houses.

Another girl had to flee because of the rampant killings. She described how she went out of her house one morning and found a chopped-up body lying on her doorstep.

Girls as young as nine are being gang-raped by gang members in their home countries. If a girl is impregnated, she will be left to care for the child until he or she is old enough to join the gang.

*Girls focus group at IES Los Fresnos.*

Children from Honduras and El Salvador described how the worsening conditions of crime and gang violence in their home countries have escalated to such a degree that they make life virtually unbearable for children in those countries. Previously, youth gangs used a variety of tactics to put pressure on children to join; now, the gangs operate under a ruthless "join or

die” policy. The children also expressed the view that, while the police in Honduras and El Salvador have always been corrupt, they are now effectively controlled by the gangs in varying degrees. Furthermore, the militarization of security forces under the popular *mano dura* (“iron fist”) policies has left children in Honduras and El Salvador as vulnerable to violent attacks from government officials as they are to attacks by gangs. Corruption and failure of governance in Honduras and El Salvador are long-term problems. Without an adequate state response, violent crime will only worsen as the influence of the Mexican drug cartels continues to grow in both countries. This suggests that the record numbers of unaccompanied children migrating north from these countries is unlikely to drop anytime soon.

The children the WRC interviewed from Guatemala, in addition to citing an increase in violence, cited poverty, poor harvests and lack of employment opportunities as significant reasons for migrating. Given the inequalities within the Guatemalan economy, the country’s vulnerability to droughts and natural disasters, and the large percentage of the work force engaged in agricultural labor, the surge in the numbers of children migrating from Guatemala is also likely to be a long-term issue.

While the unaccompanied girls the WRC interviewed gave many of the same reasons as boys for fleeing their home countries (to escape gang violence and poverty), they also cited the fear of rape and gender-based violence as major motivating factors. They described how gangs and drug traffickers in Central America are increasingly recruiting girls to smuggle and sell drugs in their home countries, using gang rape as a means of forcing them into compliance. Gangs also use the threat of rape as a tactic to gain money through extortion and kidnapping. If a girl is impregnated, interviewees explained, the gang member responsible will leave her to raise her baby alone, then come back when the child is old enough to be recruited into the gang. Just as gangs are targeting younger boys for recruitment and violent attacks, they are targeting younger girls, some as young as nine years old, for rape and sexual assault.

## Risking the Journey: Betting on the Safer Option

Children described terrible, harrowing journeys through their home countries and Mexico in order to reach the U.S. border. Most of them spent one to two months slowly making their way up to the U.S. Depending on whether they had a guide, children would travel by bus or train. If they traveled by train (nicknamed “the Beast”), they rode on top. They slowly snaked their way through the desert, not knowing when they would eat or drink next, and spoke frankly about seeing fellow riders lose their lives or limbs to “the Beast.”<sup>22</sup>

Children who traveled with guides or on bus routes described a constant threat of being killed, kidnapped and abused by criminal organizations. Those who were captured only secured their release by paying for their freedom. While not all children described mistreatment by guides, many of those who did revealed being locked in rat-infested warehouses sometimes for days on end. Some reported physical abuse by the guides. One described being beaten by a 2 x 4 wooden beam. Another child told of how women and girls were kept in a separate room and could be heard screaming while being raped. Children further described the guides’ failure to provide consistent access to food and water, especially in the desert.

Once children got to the desert bordering the U.S., many were abandoned by guides and left without food or water. Some wandered for days until Border Patrol found them. Others describe making it to the Rio Grande River and watching others drown as they struggled against the current.

The overwhelming majority of children interviewed expressed a willingness to risk the uncertain dangers of the trip north to escape certain dangers they face at home.



### If you stay you will die

Despite the horrific conditions that some of the children underwent in making the journey to the United States, the majority stated they would still make the trip, even with the knowledge of how difficult the journey was. As one child explained, “If you stay you will die, if you leave, you might...either way it’s better to try.”<sup>23</sup>

### We see death every day

“With the gangs and government, it has created an environment in which we see death every day.”  
Boys focus group, BCFS emergency shelter.

## Country Conditions in Central America: The Persecution of Children

The WRC’s background research on conditions in Central America largely corroborated our findings from recent interviews with unaccompanied migrant children. As in previous years, the majority of children detained in the U.S. are coming from Central America, and the reasons they give for migrating are familiar: crime, violence, poverty and lack of opportunity in their home countries. What has changed, according to the children, is the extent and scale of these long-standing problems. These conditions reflect the culmination of several familiar trends in Central America that have worsened significantly over the past decade, including rising crime, systemic corruption and entrenched economic inequality. The conflation of these issues has created a climate in which children constantly fear for their lives, so much so that they are willing to risk the uncertain dangers of the trip north to escape the certain dangers they face at home. As conditions worsen in Central America, which potentially impacts migration to the U.S., foreign policy and domestic federal agencies should increase their coordination.

### Honduras

#### Gang Violence

Over the past few years, Honduras has become one of the most dangerous countries in the world. In 2011, Honduras earned the dubious distinction of having the highest murder rate in the world, with 86 people killed for every 100,000, up from 82 in 2010.<sup>24</sup> For young people, the danger is even greater. When a coup in 2009 cut off foreign assistance and focused the attention and resources of the country’s security forces on the capital, Mexican drug cartels took advantage of the security vacuum by stepping up their illegal operations in the rest of the country, including their recruitment of Honduran children in gangs, or *maras*, to carry out kidnappings, extortion and murder.<sup>25</sup> Collaboration between the drug cartels and the *maras* has led to a significant increase in both inter-gang and generalized violence, with children and teens being the primary targets.<sup>26</sup> According to statistics from the University of Democracy, Peace and Security, 920 Honduran children were murdered between January and March of 2012.<sup>27</sup> Widespread police corruption and high levels of impunity have impaired any effective state response to this violence. The paralyzing politicization of the judiciary during the coup, together with the increasing militarization of civilian security forces, has only compounded the problem.<sup>28</sup> The U.S. Drug Enforcement Administration has established military-style operating bases in the country and conducted commando-style anti-trafficking raids alongside Honduran troops under a policy known as “Operation Anvil”; one such raid recently claimed the lives of several local civilians in a remote rural area believed to be the haunt of drug traffickers.<sup>20</sup> These military operations may have also contributed to this

increased displacement in communities.<sup>30</sup> In 2010, a law was passed to enable joint military/police action to combat organized crime, a move that Honduran Defense Minister Marlon Pascua has called “positive and significant.”<sup>31</sup> However, instead of curbing corruption, which remains rampant at all levels of the police force, the intervention of the military under this so-called *mano dura* (“iron fist”) policy has done little apart from ramping up the state’s use of force against children suspected of gang involvement.<sup>32</sup>

### As many as 30 deaths a day

A 17-year-old boy from Honduras said that in eastern Honduras each gang has control over different neighborhoods so people can’t leave their own neighborhood because they risk being killed by another neighborhood’s rival gang. In his town alone, he reported, there were 20 to 30 deaths a day\* as a result of gang and drug violence.

*Individual interview at BCFS, Lackland Air Force Base*

\* This statistic was given by the child, referring to a certain period in time. It is not likely to be a statistically accurate number over time.

## Femicide

In addition to the gang violence, women and girls face specific vulnerabilities to violence and lack meaningful access to justice. Violence against women and gender-based murders (“femicides”) are on the rise in Honduras, with over 2,000 women murdered between 2006 and 2011.<sup>33</sup> Gender-based violence is now the second highest cause of death for women of reproductive age in the country.<sup>34</sup> However, there is overwhelming impunity for crimes against women: according to reports by women’s rights organizations, 96 percent of all reported femicide cases between 2005 and 2010 went uninvestigated and unprosecuted.<sup>35</sup>

## El Salvador

### Gang Violence

In 2011, El Salvador had a homicide rate that was only marginally lower than that of Honduras, with 66 people killed for every 100,000 inhabitants.<sup>36</sup> As in Honduras, the violence in El Salvador is largely the result of the rising influence of criminal gangs, which recruit children and teenagers to conduct illegal activities like drug trafficking and extortion. Gangs have increasingly begun targeting children at their schools, resulting in El Salvador having one of the lowest school attendance rates in Latin America.<sup>37</sup> The strong “antiterrorism” laws passed by the government in 2007 to combat gang influence and the corresponding militarization of security forces have led to the mass incarceration of gang members in overcrowded and understaffed prisons, which has only served to strengthen gang ties and hierarchies. Gangs continue to have influence over prison guards, security forces and even the judiciary, which boasts a criminal conviction rate of less than 5 percent.<sup>38</sup> While the Salvadoran security forces have employed increasingly punitive measures against children suspected of gang involvement, the government has done little to address the underlying issues driving recruitment, such as poverty and social exclusion, and has consistently denied evidence that gangs are targeting children at schools.<sup>39</sup> In late spring of 2012, the murder rate in El Salvador dropped off sharply as a result of a peace pact between the feuding Mara Salvatrucha and Barrio 18.<sup>40</sup> However, according to Seth Jesse of the Inter-American Foundation, community-level observations suggest this truce has not necessarily brought down the rate of violent crimes committed against the general population, and gang activities like extortions and kidnapping remain prevalent and appear to be on the rise.<sup>41</sup>

### Femicide

While femicides constitute a relatively minor proportion of El Salvador’s enormous annual homicide rate (out of 4,000 murders in 2010, police identified 580 as

femicides), they are distinguished by their extreme brutality.<sup>42</sup> In 2011, the deputy head of the Salvadoran police force told the press that, while gangs more frequently target men for violent attacks, the *level* of violence that gang members use against women and girls in “sexualized killings” is higher than that typically used against men.<sup>43</sup> As in other Central American countries, El Salvador’s ineffective judiciary has consistently failed to prosecute the vast majority of violent crimes against women.<sup>44</sup>

## Guatemala

### Gang Violence and Food Security

Guatemala also suffers from high levels of violent crime and corruption, with a 2011 homicide rate of 41.4 people killed for every 100,000 inhabitants.<sup>45</sup> As is the case of its Central American neighbors, children in Guatemala, especially those in urban centers, are particularly vulnerable to targeting and recruitment by youth gangs, as well as the increased use of force and discrimination on the part of a militarized state security apparatus.<sup>46</sup> However, Guatemala is also facing a unique problem in the form of a food crisis.<sup>47</sup> According to a report by the grassroots organization Groundswell, this crisis is the result of “longstanding poverty and inequality, the worldwide financial recession and a degraded natural resource base that is deteriorating at an accelerating rate due to demographic pressures and a series of natural disasters, including repeated droughts in vulnerable areas of the country.”<sup>48</sup> While the food shortage has taken its toll on the entire country, its effects have been felt most sharply in remote rural areas inhabited by indigenous populations and unskilled agricultural laborers.<sup>49</sup> This has made it particularly difficult for young people in these groups to find local employment opportunities to support themselves and their families, leaving them especially vulnerable to the influence of the Mexican drug cartels that are increasingly moving their operations south into Guatemala.<sup>50</sup>

### Gender-based Violence

Rates of gendered violence in Guatemala have climbed rapidly over the past decade. Violence against women has become so widespread that the head of the International Commission Against Impunity in Guatemala has called it an “epidemic,” and a number of U.N. committees have expressed serious concern over the spiraling rates of rape, torture and murder of women.<sup>51</sup> Since 2000, over 5,000 women and girls have been murdered in Guatemala.<sup>52</sup> There have been successful prosecutions in only about 2 percent of these cases, a reflection of Guatemala’s judicial culture of systemic impunity.<sup>53</sup>

#### Violence drives girls north

Laura, 17, told us that she had been subjected to ongoing abuse by her uncle, who repeatedly threatened to rape her. People in her neighborhood frequently disappeared, and there were stories of kidnappings and murders by violent gangs. Hoping to escape the violence and earn enough money to send back to her severely ill mother, Laura made the dangerous journey north with her niece, traveling by foot, bus and on the tops of trains.

When she was apprehended by Border Patrol, she told us that she was separated from her niece and placed in a building that she described as “cold, with nowhere to sleep,” where agents spoke to her harshly and denied her requests for phone calls.

After 20 days in ORR custody, she told us that she had received no mental health screening or counseling for abuse.

*Individual interview at IES Los Fresnos.*



## U.S. Asylum Case Law Treatment of Gang Cases

It is clear from both our desk research and interviews of Central American children fleeing violence and persecution in their home countries that being a young person makes you a visible and targeted social group. The UN High Commissioner for Refugees (UNHCR), in its March 2010 Guidance Note on Refugee Claims relating to victims of Organized Gangs,<sup>54</sup> stated that young people, in particular those who live in communities with a pervasive and powerful gang presence but who seek to resist gangs, may constitute a particular social group for the purposes of the 1951 Refugee Convention.<sup>55</sup> The guidelines reinforce that powerful gangs, like the *maras* in Central America, directly control society and *de facto* exercise power in the areas where they operate. Due to the amount of influence gangs have over agents of the State, like police, opposition to criminal acts may be analogous with opposition to State authorities, making refusal to

join a gang an imputed political opinion.<sup>56</sup> The Special Representative of the Secretary-General for Children and Armed Conflict has also drawn attention to the complexity of contemporary conflicts, which include criminal gangs, and the particular vulnerabilities of children displaced by such actors.<sup>57</sup> U.S. treatment of gang-based asylum cases is going to become increasingly important as more UACs are fleeing their homes to seek protection in the United States and are applying for asylum.<sup>58</sup> Despite the likelihood of an increase in the number of UACs seeking protection, it has become more and more difficult for children fleeing gang violence to be successful in an asylum case.<sup>59</sup> The new requirement in an asylum application based on membership to a particular social group that the applicant's membership to that group be "socially visible" has led to many denied applications. It will be important to ensure that U.S. protection mechanisms comply with international obligations to protect those fleeing persecution.<sup>60</sup>



Outdoor holding cells at Border Patrol station at Tonoho O'odham Reservation, Tucson

## Other Considerations and Contributing Factors

### Mexican and U.S. Immigration Policies in Relation to the Surge

Recently enacted laws and policies may have influenced the rising crime rate and increasingly militarized state responses in Central America. In Mexico, the militant crackdown on drug trafficking has led many of the most powerful cartels to seek safer havens for their operations in Central America.

In May 2012, the *Wall Street Journal* published an article intimating that the surge in unaccompanied children from Central America was the result of a new Mexican immigration law. According to that article, “a Mexican law enacted last May, which lets some kids who enter that country remain there without visas for humanitarian reasons, allows more children safe passage to the U.S. border.”<sup>61</sup> However, this is a misrepresentation of both the law and its implementation.<sup>62</sup> While the law establishes new protections for unaccompanied migrant children, it neither allows children to remain without visas nor provides for their release from immigration detention.<sup>63</sup> Rather, one of the goals of the law was to ensure migrant children are moved into the custody of Mexico’s child welfare agency *Desarrollo Integral de la Familia* (DIF) instead of remaining in the custody of Mexico’s immigration enforcement agency *Instituto Nacional de Migracion* (INM), a similar practice to that of the U.S. government.<sup>64</sup> In fact, data collected by Mexico’s federal immigration agency show that the number of migrant children being detained each month almost doubled from the previous year.<sup>65</sup> The INM has also reported that the majority of these children are coming from Central America.<sup>66</sup> These numbers indicate a pattern that is parallel to that in the U.S. (See Chart 3.) While the new law provides for the possibility of humanitarian visas for unaccompanied minors, these visas are only awarded if it has been determined to be in the child’s best interest. Furthermore, the Mexican government has not yet enacted the regulations necessary to implement this provision of the law.<sup>67</sup> (See

Month	2010	2011	2012
January	326	297	562
February	333	232	460
March	407	389	528
April	376	383	556
May	410	458	557

Appendix D for the official English version of the cited excerpts of Mexico’s Migratory Laws.)

There has also been speculation about why increased numbers of UACs are coming to the U.S. Some have claimed that heightened security along the U.S.-Mexico border has sealed undocumented Central American parents inside the U.S., which has prompted their children to migrate north to seek them out.<sup>69</sup> This reasoning, however, fails to recognize that increased border enforcement and security has been in existence for several years now and does not account for the dramatic increase in the number of UACs in a few short months. It also overlooks the fact that Mexico is seeing an increase in UACs from Central America, and that the number of Mexican children apprehended has not gone up.<sup>70</sup>

Still others have speculated as to whether recent DHS policies may be contributing to the increased numbers. However, we have found no reasonable evidence for this to be the case. No recent policy directives provide benefits to children or adults arriving without documentation. Prosecutorial and detention discretion announced in 2010 do not provide any additional relief to undocumented migrants, they merely delay removal. Deferred action for young immigrants announced by the administration in June of 2012 does not reasonably relate to the surge either. The surge began before the announcement and unaccompanied children do not qualify for any of its benefits.

## Part 2: The U.S. Response to Meeting the Protection Needs of Refugee-Seeking Children

### Findings and Recommendations

In addition to asking children why they came to the U.S. and what made them leave their families and their home countries, the WRC also looked at how the U.S. government managed the care and custody of unaccompanied minors in the midst of such an influx.

Our findings reveal that the problems which ensued due to this significant increase in children were largely a result of insufficient emergency resources available to ORR's Division of Children's Services. This resource shortfall, in turn, exacerbated already existing problems in Customs and Border Protection (CBP) and ICE. Our research also uncovered some serious gaps in services and other areas for improvement by both DHS and HHS.<sup>71</sup>

The WRC's overall findings underscore the need for HHS, the White House and Congress to better support the unique needs of the legislatively mandated Division of Children's Services. The WRC believes the stress put on the system by the influx underscores the need for reform and a systematic change in the care and custody of these children pending their immigration cases. The U.S. government is now in a unique position to review and reform longstanding policies and systems.<sup>72</sup>

#### 1. HHS

During a very short time period (October 2011 through June 2012), DCS was required to care for, screen and ensure the safe release of more than twice as many children as they had held in custody in previous years. (See Chart 4.) Given the fact that DCS's resources (both staffing and subcontractors) did not increase

#### Types of Detention Programs UACs Experience<sup>73</sup>

**CBP:** *Upon apprehension at the border, pending transfer to ORR*

- Holding cells: locked windowless rooms or cages

**ORR:** *Custody authority maintained unless sponsor available and approved\**

- Community-based custody/foster care
- Shelters: locked child-friendly facilities
- Surge: locked temporary shelter programs that were used pending the opening of new permanent licensed facilities
- Staff-secure: increased monitoring and staff supervision
- Secure: subcontracted secure juvenile detention facilities

**ICE:** *At apprehension and during transport/removal*

- Shelters: typically non-secure shelter facilities used by runaway children
- Secure: sub-contracted county or secure juvenile detention facilities

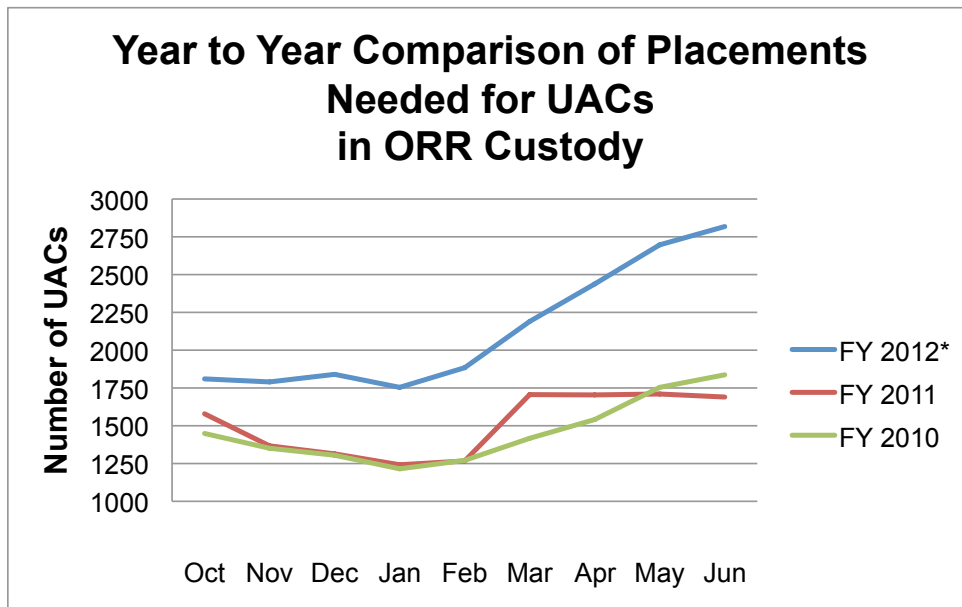
*\*See the glossary definition of UAC and the TVPRA, codified in part at 8 U.S.C. §1232(c) (2)*

proportionally to the demand for care, our findings regarding gaps in services and oversight are not surprising. These gaps resulted in denial of basic rights of UACs and much-needed services.

#### Conditions

Conditions of detention for the children who arrived during this initial influx varied depending on whether the child was placed in a "surge" facility or in a regular facility. There was no systematic way by which DCS determined which type of facility to place a child in. The decision was often made on an ad hoc basis regardless of the order of arrival, a child's reunification pos-



Chart 4: Year-to-Year Comparison of Monthly DCS Placements of UACs <sup>74</sup>

### International Education Services Surge

The International Education Services (IES) Emergency Shelter, a regular shelter program, is a complex of child-friendly buildings and cottages. There were approximately 40 children in the IES Surge program, which was primarily located inside the gymnasium. Children reported having been in “surge” an average of two to four weeks, and some as long as two months. These children were extremely frustrated with the conditions and lack of orientation. At the IES surge program, all activities for the children were held in a gym.

sibilities or likelihood of obtaining legal status. Typically, children in a surge facility experienced conditions like those during an emergency hurricane response. Children in the surge facilities did receive medical care, an intake screening, basic case management,<sup>75</sup> four hours of classes a day and some kind of recreational activity. Children fully acknowledged that this was a vast improvement over the crowded conditions at CBP stations. In contrast, children in regular facilities received a full day of programmed schooling, full case management, counseling and dental care in addition to the services offered in surge facilities. Conditions in both regular and surge facilities experienced major oversight failures.

The surge facilities were intended to be short-term triage care facilities, with children expected to be released or moved to longer-term care facilities. In reality, children stayed in surge facilities for much longer as they waited for new facilities to open up or for their reunification to go through the new streamlined release process.

According to children’s reports, the girls went outside only to walk to their sleeping cabins and the boys never left the gym as they slept in cots in the same gym used for meals and basic programming.<sup>76</sup> They watched as all the other children in regular programs (non-surge) had access to soccer fields, personal living quarters, personal items, counseling services and meetings with a case manager to discuss reunification and/or transfers, legal orientations and screening, while they received none of these comprehensive services. Many of them reported that they had not had even an opportunity to talk to family since their arrival. When asked if anyone had tried to help them locate family in the U.S. to call, they all replied “No.” They also were frustrated that new children would arrive at the facility and get placed in the regular program, while they remained in the surge program. IES also did not have the staff capacity to provide any counseling services to the children beyond the basic intake assessment. IES case managers were expected to handle not only all the regular case management but the surge cases as well.

### Baptist Child and Family Services (BCFS) Surge in Harlingen and Lackland Air Force Base

Children in both the BCFS Surge in Harlingen and at the BCFS Surge at Lackland Air Force Base reported that they received many of the services denied in the IES Surge. The BCFS surge gym was similar to the one at IES; the children slept in cots and received services/activities on-site. They had phone call access, case management services and outdoor recreational activity. For the most part they had no complaints about the conditions or social services in either place.

Children in the regular BCFS program (half of whom were previously in the BCFS surge) did have complaints about the long-term conditions. They reported that staff made unfounded threats that if they did not follow the facility's rules and procedures, the immigration judge adjudicating their case would use that information in his or her decision as to whether the child would be allowed to remain in the United States. They also felt they did not have the freedom to make a complaint for fear of reprisal.

Lackland Air Force Base was used only temporarily to address the influx and is no longer in use. It is a large complex of military buildings used for multiple purposes.

#### Boys feel "locked up"

"It's not detention like 'la hielera' ['freezer,' the term UACs use for CBP holding cells] but you're pretty much controlled the entire time."

"We can't even touch the blinds to see the sun—it just makes us feel all the more that we are closed in.\* We feel like we're locked up!"

Boys focus group, BCFS, June 7, 2012

*\* When this was reported to BCFS, they immediately addressed this complaint in their policies and building design so that all other BCFS facilities would take this concern seriously. This example demonstrates why outside monitoring and reporting to program contractors is so important.*

DCS leased one building, which typically houses soldiers undergoing training. DCS contracted with BCFS to provide the programming and manage the custody on-site. The facility looked and felt like an emergency hurricane shelter with cots for beds and portable furniture. There was an outdoor area for recreation (partly covered), classrooms, cafeteria, a call-center area for case management staff and indoor recreational rooms. The exterior was fenced and covered so it was not visible to other people on the base. Uniformed local law enforcement agents guarded the facility. During the height of the influx, it was the largest surge facility, holding up to 350 UACs at one point. When the WRC visited in June, the UAC population was down to 78 as DCS was in the process of closing the facility. Children by that time stayed for relatively short periods and had few if any complaints about the program.

### Location of ORR Shelters and Social Services

Due to the requirement set forth by the White House OMB, HHS has been required to increase the percentage of its facilities along the Southwest border.<sup>77</sup> Often these facilities are far from legal or social service providers, and far from where most children have sponsors willing to care for them. Ninety percent of all children are released to a sponsor, and most of those sponsors are living far from the Southwest border. Facilities located in areas close to important legal and social service providers would ensure better access for these necessary services for the children during their detention. Moreover, proximity to potential sponsors would increase the efficiency of a child's release, could decrease the amount of time a child is detained and facilitate post-release services.

### General Recommendations to HHS

**Recommendation 1.1:** ORR should ensure that all children receive basic social services; this should include case management, counseling services and full educational programming. ORR should allocate emergency funding so that licensed care programs can hire additional staff to provide short-term services at times of influx.

**Recommendation 1.2:** HHS should work to open facilities in “hub” areas located near services for children and in locations where most children are released. HHS should convert existing shelters on the border into short-term “reception” or “transition” centers. Children should stay for no more than two weeks, after which time they should be moved to a placement in hub locations close to the child’s prospective sponsor. Children placed in reception centers along the border should receive as many services as possible during the very short time they are there, including legal orientations/screenings, counseling and case management. Children should then be transferred to hub locations in the vicinity of sponsors pending the processing of reunification. Both HHS and DHS should invite input from service providers and NGOs in determining appropriate hub locations based on the availability of services. (See also Recommendation 2.8.)

**Recommendation 1.3:** DCS must ensure that its sub-contractors who provide services for detained children do not inappropriately employ threats against a child’s immigration case or release to a sponsor as a way to ensure compliance with facility rules and regulations. DCS must ensure all facilities have a process that guarantees children can make complaints without fear of reprisal.

**Recommendation 1.4:** DCS should expand its use of alternatives to detention, such as foster families and foster group homes. The vast majority of DCS placements (80%) are in large residential confinement settings such as shelters, staff-secure and secure. (See box on page 14.) DCS should rely on child welfare best practices and UNHCR Detention Guidelines for expanding community-based placements. A child’s preference should also be a consideration.

### Oversight

ORR still needs to implement the staff oversight recommendations the WRC originally made in the report *Halfway Home*.<sup>78</sup> The oversight DCS does provide includes regional supervision by federal field supervisors (FFSs)

and programmatic supervision by program specialists.

During the height of the surge in the spring and early summer of 2012, DCS FFSs worked around the clock to provide the best care they could while they were forced to supervise twice as many placements, transfers and releases, and twice as much programming. DCS FFSs had little or no time to talk with children in their care, adequately supervise grievances or meet with attorneys and child advocates about other problems. This created conditions that led to lapses in oversight and curtailed services. This is especially important, as the number of children detained in shelters goes up and the responsibilities of DCS FFSs increase. Many of the problems could have been identified early on if DCS had an effective and vigorous oversight and monitoring program in place. Identifying such needs early on could also facilitate the request for and provision of resources for additional staffing and adequate programmatic support from ORR, Administration for Children and Families, OMB and the White House.

### Recommendation to HHS on Oversight

**Recommendation 1.5:** HHS and ORR should support DCS by providing additional staffing in times of increased arrivals. This will require funding. HHS should request and receive funding, similar to that of humanitarian funds for refugee emergencies, to be able to use in subsequent emergencies or increased arrivals. This will ensure appropriate resources are available to maintain the integrity of DCS services, oversight and supervision.

### Monitoring

HHS and ORR have also failed to institute regular independent monitoring by inspectors outside of DCS. As noted above, the WRC identified various gaps in services that ORR was unaware of or had not identified. Independent monitoring provides an added check on ORR’s oversight system; it can identify gaps in oversight, procedural failings and needs for retraining of both program and federal staff. Children may also feel more comfortable revealing their concerns to monitors who do not have program and supervisory relationships

with facility staff. The WRC's research and interviews also indicated that children who have complaints often do not know who to turn to if they do not feel safe revealing them to the program director.<sup>79</sup> Currently no outside reporting mechanism exists. Children, attorneys and service providers would benefit from a hotline to report incidents and complaints confidentially and/or anonymously. Attorneys funded by ORR to provide services to detained UACs have also expressed confusion and hesitation to report complaints, particularly since all of them receive funding from or are associated with ORR contracts.<sup>80</sup>

DCS is required under the *Flores Settlement* to provide children notice of their right to judicial review in federal court of placement decisions.<sup>81</sup> From the program lists of children's rights the WRC has obtained, our interviews with UACs and staff and our program site tours in June 2012 and in the fall of 2011, it is not clear that UACs are aware of this right. Children also do not participate in "staffings," where these placement decisions are made.

### Recommendation to HHS on Monitoring

**Recommendation 1.6:** HHS should create a separate monitoring mechanism for children in DCS custody. Monitors should be able to review oversight systems, interview children and receive phone calls from UACs in custody or from advocates.

**Recommendation 1.7:** DCS should review procedures and policies to see how they can incorporate the views and concerns of children. In order to consider the child's best interests, the child's voice, wishes and concerns must be fully integrated.<sup>82</sup>

### Legal Orientation Services in Surge

Perhaps the issue of greatest concern was the lack of Know Your Rights (KYR) presentations and legal screenings in surge placements.<sup>83</sup> While DCS did eventually work with subcontractors to provide KYR presentations in some locations by late May and June, the vast majority of children in the surge had no KYR

presentation or legal screening. DCS also turned away attorneys who had offered to assist with KYRs and legal screening at the short-term surge facilities on a pro bono basis.<sup>84</sup>

Without a legal orientation, children described feeling that they were going crazy because they had no idea what was happening to them, how long they were going to be there or if they would get any immigration relief. Lack of legal screening and orientation could result in greater numbers of children who do not seek legal assistance upon release and greater *in absentia* removal orders if the children are not provided with sufficient information about immigration proceedings, their rights and their responsibilities. Program staff also reported being put in the difficult position of having to answer the children's legal questions because there was no one else the children could turn to with their questions.<sup>85</sup> Moreover, DCS only provided children with information about legal services providers who are ORR subcontractors through the Vera Institute of Justice instead of the EOIR listings of free or low-cost attorneys, which are more expansive and meet EOIR standards.<sup>86</sup> Both the Immigration Nationality Act and Flores require a list of free legal service providers approved by the Attorney General to be provided to all UACs.<sup>87</sup>

### Recommendation to HHS on Legal Services

**Recommendation 1.8:** HHS must prioritize funding for legal orientation and screening as a necessary service. This funding should increase proportionally as more children are placed into DCS custody. ORR should also create emergency contract plans with NGOs for situations where there are significant increases in the number of children arriving into custody.

**Recommendation 1.9:** HHS should ensure children are provided with information on how to secure legal assistance while in detention and how to access free or low-cost legal services upon release. They should be able to make confidential phone calls to private or legal services attorneys while in detention. HHS should also provide additional funding for post-release legal services. This is critical as children are released more



quickly and at higher rates than in the past.

### Reunification and Post-release Social Services

In FY2011, the average length of stay in care was 72 days. By early FY2012, DCS started to review its reunification process in order to make it more efficient and cost-effective. DCS also recognized that reducing the length of stay in detention also reflected best practices in child welfare by placing children with family who are willing and able to care for them.<sup>88</sup> DCS also made the reunification packets for families available on the Internet so they could start collecting the necessary documentation as soon as possible. As a result of the new streamlined process, by April 2012, DCS reduced the average length of custody to 40-45 days. (See Chart 5.)

<b>Chart 5</b>			
<b>Average Length of Stay of UACs in DCS Custody (in days) <sup>89</sup></b>			
<b>Month</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012 *</b>
October	69	73	66
November	65	74	60
December	68	81	59
January	68	75	67
February	73	77	60
March	71	76	54
April	57	62	46
May	53	66	40
June	59	69	41
July	64	70	
August	68	70	
September	80	66	
<b>Average</b>	<b>66</b>	<b>72</b>	<b>55</b>
* Oct 1 - Jun 30			

As a result of the streamlined reunification procedures and increased numbers of UACs, a backlog in post-release services (follow-up case management services)

developed.<sup>90</sup> Children were released without any services in place or scheduled. The case management services can be crucial to ensure a child is enrolled in school, receives necessary medical care, and is not being put in neglectful or harmful home environments. While a delay in post-release services should not be a reason to keep a child in detention, ORR must take into account the increased demands for post-release services as they calculate and distribute resources needed so that delays that potentially put children at risk do not occur. In contrast, children who received the TVPRA-mandated home studies (children with disabilities, victims of physical or sexual abuse, circumstances that indicate the child's health or welfare has been harmed or threatened or a sponsor presents a potential danger) are provided follow-up services while removal proceedings are in process.<sup>91</sup> In some cases these services are provided for years and long after than is necessary, contrary to social work ethical guidelines.<sup>92</sup>

### Recommendation to HHS on Post-release Services

**Recommendation 1.10:** ORR should provide additional resources for post-release services proportional to the increase of UACs. ORR should respond immediately when backlogs in post-release services occur in order to assess whether additional funding or contracted providers are needed.

**Recommendation 1.11:** DCS should reform its current post-release referral process so that children's needs are being adequately met without duplicating efforts and to ensure the child's best interests are being met. Post-release service plans should be individualized according to the child's needs. This should include an outside referral request system for attorneys, LOPC providers and child advocates to help ensure continuity services throughout the immigration process. See Recommendation 3.4 for legal services.

**Recommendation 1.12:** The TVPRA should be revised or implemented to ensure that service provision is provided according to the children's actual individual needs and not some arbitrary guideline.

### The need for expanded referrals to post-release services

United States Council of Catholic Bishops (USCCB) noticed that many children are released from ORR to sponsors without any post-release social services in place. Many of these children have documented histories of trauma and abuse. Because of this identified need, USCCB set up a program with private funding called their “Community Referral Program.” Legal Orientation Program for Custodians (LOPC) Providers and Attorneys for released UACs can submit a referral for case management services such as school enrollment assistance, and addressing medical, mental health, or other needs.

DCS could also provide better coordination with post-release service providers. Currently, case managers notify all service providers of a referral for post-release services before actually assigning the case to one provider. In response, several service providers may start reviewing the same referral, gathering background information or even coordinating service needs with the case manager. As a result, service providers duplicate the service plan development and sometimes receive no notice a child's case has been assigned to another service provider until after the fact. The current system should be reformed to eliminate this waste of time and resources.

As a result of the new streamlined reunification process, counselors and case managers at facilities have less time to develop a relationship with children and ascertain their individual needs. In some cases the service plan developed by the case manager at the facility grossly underestimates the children's needs because histories of trauma may not have been revealed prior to release. These services are also crucial because they can assist with enrolling the child in school, following up with sponsors to ensure they go to LOPC orientations, locating legal service providers and reminding sponsors of court dates. *See Legal Services in Section 3 and Recommendations 1.7, 1.8, and 3.4.*

As the percentage of children being released increases and as release (or reunification) occurs more quickly, it becomes even more critical to ensure that they are receiving necessary and appropriate information and services in order to both address their protection needs and facilitate their appearance in immigration court.

## 2. Department of Homeland Security

### Conditions

Children interviewed reported that after being apprehended by immigration officials, they were held in holding cells, or “*las hieleras*” (“freezers” or “iceboxes,” as children refer to them) for close to two weeks while waiting for ORR to place them in a detention facility or foster care program. This conflicts with the goal set in the HSA and TVPRA and agency policies to transfer children as soon as practicable and within 72 hours of apprehension.<sup>93</sup> Both CBP and ORR acknowledge that part of the problem was a lack of bed space to ac-

commodate the increased volume of children.

Children who were held in CBP custody reported serious concerns about conditions, which were further exacerbated by the length of time in the holding cells. The vast majority reported receiving inadequate food and water, being denied blankets despite holding rooms being kept at frigid temperatures and having no access to bathing facilities (this is significant considering the length of stay and the condition in which most of these children are apprehended—having traveled for long periods, often with insufficient food or water, walking through the desert and crossing the river). Many of them could not accurately say how long they were



in holding cells as the lights were constantly on and there were no windows to the outside, causing them to lose track of time. Children also reported that holding cells were overcrowded. One child described how the children organized themselves to sleep in shifts because there was not enough room in the holding cell for all of them to lie down.<sup>94</sup> Pregnant girls reported that they did not receive adequate medical attention or food.<sup>95</sup> While these conditions were in part due to the surge and overcrowding, they are consistent with past reports of conditions in border patrol custody.<sup>96</sup> (For more information on conditions for children in CBP custody, see *Halfway Home*.<sup>97</sup>)

### **Tucson Sector CBP Stations**

None of the CBP Border Patrol (BP) or Office of Field Operations (OFO) facilities toured had showers, trained medical staff or recreation areas for the children. All of them had small holding rooms for children with no access to natural light or beds on which the children could sleep. All three facilities kept the lights on 24 hours a day. A local NGO that regularly interviews migrants recently released from CBP custody has reported severe overcrowding with no clear guideline on how many children could be held in a cell at one time.<sup>98</sup> CBP did not allow the WRC to interview anyone detained at their facilities.

### **Rio Grande Valley CBP Stations**

Although CBP denied the WRC access to visit the CBP stations in the Rio Grande Valley, Division of Children's Services (DCS) employees told us they had partnered with CBP to improve the conditions of children held at CBP stations. For example, DCS provided soccer balls to CBP, which arranged for children held at the Fort Brown Station to have some outdoor recreation in a converted docking station.<sup>99</sup> CBP also worked with DCS to arrange for children to bathe and receive clean clothes. CBP's Office of Field Operations (OFO) agents secured the services of a doctor who volunteered to make visits to the station as needed. Both BP and the OFO ensured their stations had

adequate supplies, such as diapers and baby food.

As more children come to the U.S. border seeking protection, DHS will have to reform its procedures to meet their needs. DHS needs to find ways in which it can separate its law enforcement actions from its humanitarian responsibilities. Both BP and OFO will need to allocate additional resources and transform infrastructure to accommodate the special child protection needs of this population pending their transfer to ORR.

Furthermore, the WRC is concerned at the lack of transparency and access to CBP stations and detainees held there. In 2006 and 2007, the WRC did obtain limited access to a few facilities and was able to speak to a few children; however, since that date access has been extremely difficult and limited. While very restricted access to select facilities chosen by CBP was permitted in 2011 and 2012, interviews with detainees for monitoring purposes has been consistently denied. This is in direct contrast to very open access to DCS and ICE facilities. While CBP has become more open to interaction with NGOs and we applaud the evolution of the public liaison role, this has not yet resulted in appropriate transparency and access to short term detention facilities.

### **Recommendation to DHS on Conditions**

**Recommendation 2.1:** CBP should develop an emergency response plan for times of huge influxes to meet the needs of vulnerable populations who may stay in its care for periods longer than 72 hours. CBP should institutionalize some best practices, including partnerships with ORR for UACs' immediate care needs and designate certain stations as best equipped to deal with while children await placement in ORR facilities.

**Recommendation 2.2:** CBP needs to implement new policies to ensure that the basic human rights of those in confinement are upheld. Simple changes like regulating the temperature, providing blankets, turning lights off at night, providing access to bathing facilities and giving adequate food and water should be the baseline for condition standards.

### Mistreatment by Custom and Border Protection's Border Patrol

Almost all the children the WRC spoke to in DCS custody reported concerns regarding how they were treated by BP. While many were relieved to be free of coyotes, traffickers and the dangers of their journey when apprehended, some of them reported receiving better treatment by coyotes than in the hands of BP.

One child reported having a gun held to his head in order to “keep him from running away.”<sup>100</sup> Children reported other aggressive physical treatment even when they turned themselves in to BP, such as the use of taser guns and shoving and kicking prior to arresting them. Many children also reported that BP destroyed their belongings, including Bibles, throwing away the only possessions they had.

Children reported that mistreatment continued at BP stations. They said that BP agents would go into the holding cells and kick over children's cots as they tried

to sleep or yell at them if they tried to look out the small window of their holding cells. Some spoke of being interrogated through the night despite being ready to collapse from exhaustion. Many also reported being called animals or the use of racial slurs and other derogatory terms.<sup>101</sup>

#### Harsh treatment in the hands of Border Patrol

Felipe, 17, told us that when he was apprehended by Border Patrol, agents pulled his hair, then shoved him into a van. He told us that they threw all his belongings in the river and ripped up a picture of his mother. Although he says he never resisted or ran away, he was treated harshly. Felipe said that when he was in the “freezer,” lying on a cot, a Border Patrol agent came in and kicked it, waking him up and rolling him off, onto the floor.\*

*Boys focus group, BCFS emergency shelter*

\* Felipe filed a formal complaint with CBP.

#### Border Patrol harassment and intimidation

Eduardo, 17, told us that he was crossing the desert on foot near McAllen, Texas, in a group of five when his group was stopped by Border Patrol. He was one of three youth in his group; the others were a pregnant woman and a guide. Eduardo told us that the Border Patrol agents grabbed his neck and shoved him, then used a taser gun on him and the other migrants, including the pregnant woman, before handcuffing them. Eduardo said that things “were a little better” in the “freezer,” but that Border Patrol agents continued with verbal harassment and insults, using emasculating words and slurs against their mothers. He told the WRC that whenever he or others in his cell tried to speak up for their rights, agents started slamming the door aggressively to intimidate them.\*

*Boys focus group, BCFS emergency shelter*

\* Eduardo filed a formal complaint with CBP.

### Recommendations to DHS on Treatment of Children

**Recommendation 2.3:** DHS should institutionalize a zero tolerance policy towards agents who commit human rights abuses. DHS must ensure all CBP agents receive necessary child protection training and are held accountable to agency standards for the apprehension and detention of migrants. The federal government must ensure there is adequate oversight and accountability for agents who violate policies and practices. Independent monitoring, transparency and access to facilities by NGOs and international organizations must be instituted.

**Recommendation 2.4:** CBP should allow NGOs to conduct monitoring visits similar to ICE's access policy.

#### Lack of Screening

From interviews with CBP officials, the WRC learned

that agents are still not adequately trained to screen children from contiguous countries for fear of persecution or human trafficking.<sup>102</sup> This screening was mandated by the TVPRA in 2008 and four years later is still not being effectively implemented despite assertions by officials that training has been developed.<sup>103</sup>

### Recommendation to DHS on Screening

**Recommendation 2.5:** CBP must create and implement training for its officers on how to screen for vulnerable children. CBP should consider collaborating with subject matter expert NGOs on designing and executing these trainings. CBP should ensure child welfare experts conduct the screenings and should monitor the implementation and effectiveness of screening.

**Recommendation 2.6:** CBP should ensure children are informed of their rights while in custody in a manner and language they can comprehend. Children must be given meaningful and adequate information, mechanisms and opportunity to assert their rights, file complaints and claims for protection.

### Resource Allocation

In border enforcement by CBP, older children were usually apprehended by BP, while families, younger children and babies were apprehended at ports of entry (POE). Despite the increased number of children apprehended by CBP, BP reported it had sufficient staff and financial resources to deal with the increase. In comparison, OFO reported having problems adequately staffing their hold facilities and were forced to have agents work overtime at great cost in order to accommodate the increased volume at their stations.<sup>104</sup>

### Recommendation to DHS on Resource Allocation

**Recommendation 2.7:** DHS and Congress should appropriate funds for adequate staff at ports of entry.

### Transport

ICE has the responsibility of transporting all UACs apprehended either at the border or internally to the cus-

tody of DCS. As a result of the influx, ICE reported using significant amounts of overtime in order to transport children to locations where there was available bed space. For each trip, ICE sends two federal agents to accompany the children. This is not only a burden on ICE resources, but it is a very inefficient way to ensure safe and secure transport of these children. It is generally not in the best interest of the child to be transported in the custody of armed agents with badges.

In 2002, the HSA was passed and the responsibility for the custody of children went from DHS to HHS. But the responsibility to transport the children from DHS facilities to HHS facilities remained with ICE.<sup>105</sup> To help the agencies transition to this new plan, the OMB set up some requirements for both agencies. One of the most controversial is that it required HHS to keep 65 percent of its facilities within 250 miles of the border.<sup>106</sup> This requirement, intended to minimize ICE costs for transfer and facilitate quick placement in ORR facilities for the children, has hampered both agencies' abilities to be effective and efficient in placing children in appropriate locations for their care and release when appropriate.

Many of the children apprehended at the border are eventually reunified with family or released to sponsors in the interior of the U.S. Clustering the custody of children at the border, away from their ultimate destination, makes reunification more difficult and often results in longer periods of custody to the detriment of the child and at greater government expense.

When DHS immediately files a child's Notice To Appear (NTA) on the court closest to the initial short-term detention, it is a waste of limited resources if the child will be moved shortly to a more appropriate hub city for detention or reunification. The current practice of requiring a child petitioner to request a change of venue if he or she is moved by ORR or reunified increases the likelihood a child will receive an in absentia removal order,<sup>107</sup> despite the federal government being responsible for the child's changed venue.

### Recommendations to DHS on Transport

**Recommendation 2.8:** ICE should subcontract with NGOs or child welfare experts to assist with the transport and screening of children. A pilot program would allow for assessment and cost benefit analysis.

**Recommendation 2.9:** The White House should support DHS and HHS efforts to map the apprehension, detention and release of UACs and, if deemed appropriate, give them the flexibility to place their detention facilities in locations closest to sponsors and necessary services for the detained children. The Administration should rescind its requirement that HHS place a certain number of detention beds near the U.S.-Mexico border and allow the agencies to determine a more cost-effective way to transport and detain these children. This would also ensure HHS is able to provide all necessary services to these vulnerable migrants. (See also Recommendation 1.2.)

**Recommendation 2.10:** DHS should wait to serve a child's Notice to Appear on the immigration court where the child will either be detained for the duration of their case or where he or she will be reunified.<sup>108</sup> Alternatively, DHS should coordinate with EOIR for the creation of an automatic transfer system instead of requiring the child to submit the change of venue form.<sup>109</sup> This will reduce the number of in absentia removal orders issued against children and reduce a large administrative burden on EOIR, which is responsible for transferring cases and files to appropriate courts.

## 3. Department of Justice

### Legal Orientation Program for Custodians (LOPC)

In 2010, EOIR expanded its Legal Orientation Program to include a special program, the LOPC, for sponsors or custodians of UACs. The goal of this program was to help adults who were responsible for ensuring children released from detention complied with the immigration court procedures, understand their responsibilities and

how to access services to reduce court attrition rates. The program was mandatory for all custodians and attendance was a requirement for sponsoring a UAC. It has been active in 14 cities around the country. When the number of children apprehended and placed into removal proceedings doubled, the LOPC program struggled to ensure all custodians were receiving the orientation program. As part of the streamlined reunification process, EOIR, at the request of DCS, temporarily waived the requirement of attendance for reunification.<sup>110</sup> Like DCS, despite a doubling of UACs, EOIR received no extra funds to provide LOPC to double the amount of custodians.<sup>111</sup> They were not initially updated with the release locations of the children, but DCS did continue to provide regular monthly release reports.<sup>112</sup>

### Recommendations to DOJ on LOPC

**Recommendation 3.1:** Increase the budget of the LOPC program to allow it to adequately serve the increased number of custodians needing information on how to comply with EOIR court requirements and how to access important services the UAC may need upon reunification.

**Recommendation 3.2:** Allow EOIR to provide all information and services it deems fit to support the sponsor during reunification in order to reduce in absentia removal orders for released UACs. If UACs are moved to new venues by the federal government, the federal government should be responsible for ensuring the child's court case follows them. (See also Recommendation 2.9.)

### Immigration Court: Nexus of Services

Both EOIR and other service providers expressed concern that UACs and their sponsors were missing out on important social and legal services offered at low or no cost.<sup>113</sup> These concerns only heightened as children were being released faster and faster from ORR care, often without any case management or legal screening prior to release. Service providers, although pleased that children were spending less time in detention, were concerned that there was no safety net



for children upon release. Important services include an LOPC orientation for the custodian, a legal screening for the released child, a consultation with a *guardian ad litem* or child advocate, and information on how to obtain local social support services. Providing space in the courthouse during EOIR juvenile dockets where service providers could meet with UACs and their sponsors to conduct interviews or relay important information would help ensure these critical needs are being met. This model is successfully used in state juvenile courts.

### Recommendation to DOJ on Immigration Court

**Recommendation 3.3:** Ensure each EOIR Immigration Court has a juvenile docket. DOJ should require each EOIR courthouse to lend space to LOPC grantees, nonprofit legal service providers and *guardian ad litem*/child advocate programs to conduct presentations and interviews for UACs and their sponsors.

### Legal Counsel

Unaccompanied children still have no right to counsel at government expense.<sup>114</sup> Whether in immigration custody or upon release, thousands of unaccompanied children still proceed with their immigration case without legal counsel or a *guardian ad litem*.<sup>115</sup> While there are service providers throughout the country that provide free or coordinate pro bono services to unaccompanied children, they are unable to provide assistance to all the children who need it.<sup>116</sup> To date immigration courts have been unable to track consistently the numbers of unaccompanied children without representation.<sup>117</sup> Failing to provide no cost legal representation seriously undermines children's right to be heard.<sup>118</sup>

### Recommendations to DOJ on Legal Counsel

**Recommendation 3.4:** All children should be guaranteed legal counsel in removal proceedings and subsequent appeals.<sup>119</sup>

## Conclusion: Looking Forward

Since the passage of the Homeland Security Act of 2002 and the TVPRA in 2008, the U.S. government has made great progress in the treatment of UACs coming to its borders. Recent increases in the number of children arriving, combined with what appear to be increased protection needs have highlighted remaining gaps. In particular, as the demographics of the children arriving at our borders shifts, government policies and practices at the border must adjust to respond accordingly. This is particularly important if the shift and increased numbers continue.

The WRC's recommendations seek to remedy the resource, protection and justice gaps that have become further aggravated as more unaccompanied children come to the U.S. The influx in UACs has caused many federal agencies to step back and reassess their policies. The WRC looks forward to seeing the government address these systemic problems through legislative and administrative reform. While this report focuses on U.S. response to unaccompanied children, in particular those coming from Central America, more research and resources will need to be allocated to looking at the push factors in each of the Central American countries of Guatemala, Honduras and El Salvador. Because of the growing protection needs of children in this region, the report will also be shared with federal, foreign policy agencies. The growing problem of "lost" children in Central America will also require the U.S. to rethink its response.

## Appendix A

# International and Domestic Child Welfare Standards

### The Best Interests of UACs

The Women's Refugee Commission has long advocated that the child's best interests be incorporated in every decision regarding custody, legal procedures and relief, and repatriation. Effective child protection policies should ensure that the child's wishes, the child's safety and the child's familial and cultural needs in accordance with international humanitarian law and in U.S. child welfare principles. The WRC advocates for the better integration of these principles in the care, custody and release of unaccompanied alien children (UACs).

### The Child's Wishes

A child should always feel safe in communicating his or her wishes, concerns and questions relating to the child's care and custody. Providing such opportunity is important for the child's development and security.

Incorporating the child's wishes into policy and procedure is consistent with international human rights instruments and U.S. child welfare policy. The Convention on the Rights of the Child (hereafter, "the Convention") states, "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child [...]"<sup>120</sup> In the General Comments to the Convention, the Committee on the Rights of the Child explained that the right to be heard "constitutes one of the fundamental values of the Convention."<sup>121</sup> Experts in the field have also stressed that the child's expressed wishes must always be a consideration in best interest analysis because children have a right to participation in decisions that will impact their lives.<sup>122</sup>

International law and child welfare experts support the view that a child's viewpoint should be ascertained no matter how young the child is.<sup>123</sup>

The U.S. child welfare system has also recognized the importance of child agency by providing a lawyer or other child advocate to represent children in court proceedings. States have also chosen to codify the child's express wishes as a factor.<sup>124</sup> International law also supports the guarantee of legal representation for children who have been deprived of their liberty or who are involved in court proceedings.<sup>125</sup> Contrary to international legal standards, the U.S. legal framework does not guarantee legal representation for unaccompanied child migrants. Because of this, it is critical that at a minimum best interest considerations take into account and provide a voice for the child throughout the immigration and custody process.<sup>126</sup> Thus, for the unaccompanied child migrant in U.S. custody, this requires meaningful participation in decisions regarding placement, immigration proceedings,<sup>127</sup> release and repatriation.

### The Child's Safety and Security

The child's safety and security must also be a foremost concern in care and custody of children.<sup>128</sup> The Convention articulates the child's right to safety and security that reflects the whole child, his or her physical safety as well as mental health, educational and emotional well-being.<sup>129</sup> No matter what stage an unaccompanied child is in custody—in the apprehension, short-term hold rooms, legal proceedings or repatriation—the child's safety must remain a primary consideration.

### The Child's Familial and Cultural Needs

In order to respond to a child appropriately and make an informed best interest determination, the child's familial and cultural needs must be considered. The Convention repeatedly stresses the need to protect the parents' role in the child's life, the child's right to his or



her family and the child's right to his or her culture and religion.<sup>130</sup> Standards by the U.N. General Assembly,<sup>131</sup> UNHCR<sup>132</sup> and American Bar Association (ABA)<sup>133</sup> also enumerate numerous family and cultural considerations, recognizing this as an important principle in the best interest analysis. This principle is relevant in custody decisions, location and release, as well as potentially having an impact on legal relief and repatriation. The familial and cultural needs of the child also balances considerations for the child's safety or the child's wishes regarding placement or legal relief with the child's other needs.

This principle also recognizes the fundamental right parents have to their children and their right to make decisions about their upbringing. In assessing the child's familial needs, the child's family should be defined as broadly as possible. Recent best interest research also suggests the importance of both the child's "psychological parent" and "family network"; these approaches stress the child's psychological need for maintaining relationships that are the most important to the child and recognizes how the definition of family may evolve with different cultures.<sup>134</sup>

The child's familial and cultural needs will therefore be important when making decisions regarding keeping a child in custody, placing a child near/far from family, releasing a child, considering whether it is in the child's interest to have the parent/guardian present during an immigration proceeding,<sup>135</sup> or whether the child has family or a support system if repatriated.

## Appendix B

### Focus Group Questions

The children were not given a questionnaire to fill out because of their varying reading and writing levels. For quantitative questions, the interviewer did poll the group to get a number assessment.

#### Background:

1. What countries are you from?
2. What are your ages?
3. How many of you have ever been to the U.S. before?
4. How many times did it take you all to make the journey before you got here?
5. How many of you have family (parents or other extended family) here? Whereabouts are they located?

#### CBP:

6. When you arrived, how were you apprehended? By immigration in green uniforms (BP) or blue (OFO)?
7. How were you treated by them?
8. For how many days did you stay in their [CBP] custody—in la hielera (or “icebox”/“freezer” term used by youth to describe CBP holding cells).

#### Reason for Coming/Journey:

9. What are some of the reasons why you came to the U.S.?
  - a. What were things like in your home country?
10. What were you expecting to do once you got to the U.S.?
11. How did you travel here?
  - a. Did you have a guide?

- b. Did you take the bus/train?
    - c. Did you travel alone or with family/friend?
  12. How were you treated by the guide?
    - a. Were any of you mistreated?
    - b. Did you travel in a group? How many?
    - c. How were girls/women treated differently?
    - d. Were there adults or mostly youth in the group?
    - e. How were youth treated differently?
    - f. Did you encounter any problems along the way?
  13. What were conditions like during the journey?
    - a. How long did it take you?
    - b. What was the cost?
  14. Before immigration apprehended/arrested you—what did the coyote say would happen once you got to the U.S.?
  15. Did you know you would come to a facility like this one?
  16. When you or other youth you know travelled—how often do you think coyotes helped?
  17. Did you make the choice to go on your own or did your family?
    - a. Did you want to go?
    - b. Do you have family here?
  18. Is the journey worth it?/Knowing what you know now about how difficult the journey is—would you still make it?
  19. Right now there are more youth coming to the U.S. than have ever come before—why do you think that is?
- ORR Conditions:**
20. How long have you been here in this facility?

21. Were you in any other facilities prior to this one (but not la hielera)? For how long were you in that one?

22. How are things here?

- a. Have you had a chance to talk to family on the phone? For how long and how often?
- b. Have you had a know your rights (KYR)—a presentation about your legal rights? Do you have an attorney?
- c. Have you met with your case manager? Has anyone discussed with you what will happen next (Release to family? Move to another facility?)
- d. How many hours a day do you go school?
- e. How much time outdoors do you get? How much recreational activity do you have?
- f. What sort of food do you receive?
- g. Are you religious? Are you able to have access to the religious services you want? (Who comes? Do you go out?) Are you forced to practice a religion?
- h. How does the staff treat you?
- i. Do you know how to make a complaint? Have you ever made one?
- j. Are there any recommendations you have to make things better?

23. What does it feel like to be in this facility?

## Appendix C

### Research and Data Supplement

#### Overview of Focus Group Participants

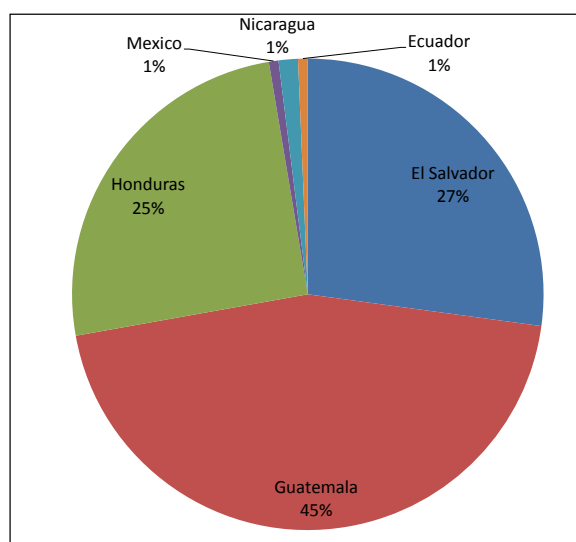
The WRC interviewed 151 detained UACs. The WRC primarily interviewed children using focus groups; five children were interviewed individually. The average age of the UAC interviewed was 16 and the youngest participant was 10 years old. The WRC was clear in interviews that the WRC was not providing individual representation for the children and questions were designed to instigate discussion and generalized responses. All participation was voluntary. Children had the option of signing a consent form and participating or of joining their regular programming. Consent forms had varying levels of confidentiality, including providing the child the option to share their story but remain anonymous or waive confidentiality. Only a few children waived confidentiality of their name in order to allow WRC staff to make formal complaints on their behalf since the children did not have a way of doing so while detained. The WRC did not use recording devices; quotes from children may have been paraphrased through translators and during note-taking. For sample focus group questions, see Appendix B.

Overall, the participants in our focus groups/interviews proved to be a close representation of the gender and nationality of migrant children coming apprehended at the border and placed in DCS custody. All focus groups were single-gendered; 129 boys and 22 girls participated. There were two all-female groups: one group comprised of pregnant girls and mothers who were living in foster homes and the other group were of girls living at a mixed-gender shelter facility.

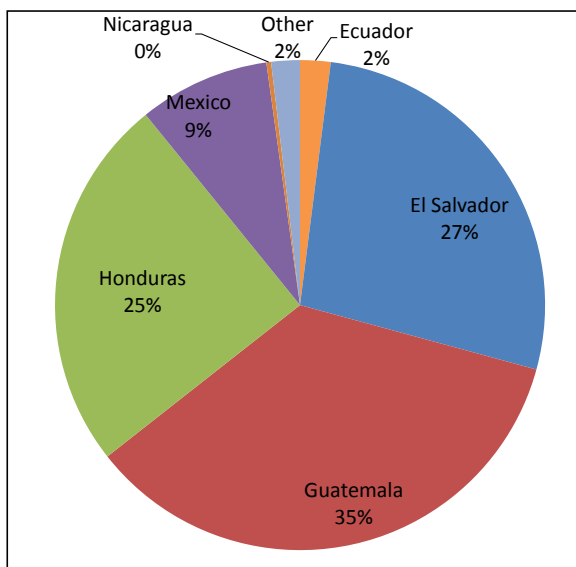
Only two of the participants had ever been in the U.S. previously. One hundred and twenty seven participants had a family member in the U.S. (85%). The countries of origin represented were: Guatemala (68 partici-

pants), El Salvador (41), Honduras (38), Nicaragua (1), Mexico (1) and Ecuador (1). (See Chart 6.) Our participant sample group proved to be close to the overall country profile of UACs detained by DCS in fiscal year 2012: Guatemala (35%), El Salvador (27%) and Honduras (25%) and CBP's data on UACs apprehended from noncontiguous countries. (See Charts 7 and 8.)

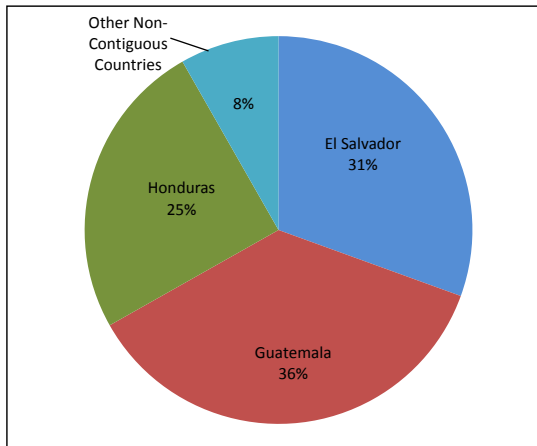
**Chart 6: Women's Refugee Commission Focus Group Participants & Country of Origin**



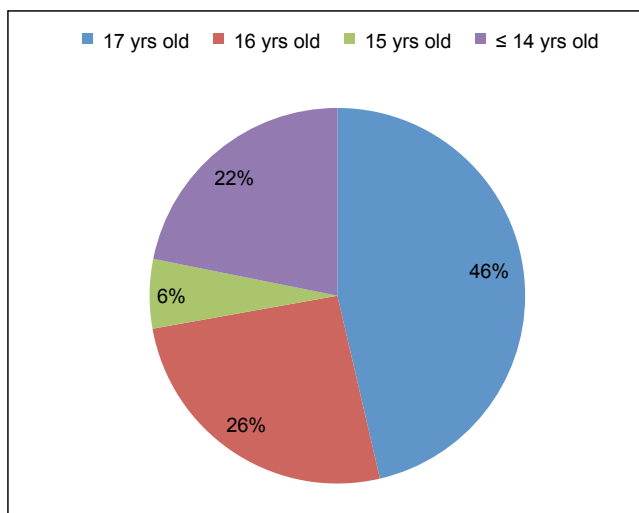
**Chart 7: UACs and Country of Origin in ORR/DCS Custody, Oct. 2011 - June 2012<sup>136</sup>**



**Chart 8. FY 2012 Apprehension of UACs from non-contiguous countries by CBP (OFO and BP), Fiscal Year 2012** <sup>137</sup>



**Chart 9: Focus Group Participant Age Range**



## Choosing the Locations for Research

The WRC interviewed participants in seven DCS placements the second week of June 2012. The WRC focused the majority of its time in the Rio Grande Valley because the area has the highest concentration of UAC apprehensions. The WRC was unable to get approval to visit any CBP stations in the Rio Grande area; however, in May the WRC did visit CBP stations in the Tucson, AZ, border sector that had the second-highest number of UAC apprehensions.

## Rio Grande

In the Rio Grande area, the WRC interviewed children detained by DCS in foster care programs, children in regular shelters who had previously been held in a surge program, children currently in a surge program and children who had gone directly from CBP custody to a regular DCS shelter. The WRC interviewed children from a total of six programs in this area.

The WRC interviewed children at the following three different IES programs:

- foster care programs from Harlingen and in Brownsville (interviewing teen mothers and pregnant girls);
- the active surge program at the IES Emergency Shelter in Los Fresnos.

At BCFS Harlingen (all boys), the WRC visited three different programs:

- an extended care program (children had been in custody anywhere from a month and a half to six months);
- the Hennessey shelter program (children had been in custody for a period of a few days up to two weeks);
- the BCFS emergency shelter (almost all of these children had been previously in the BCFS “surge” program).

## Lackland Air Force Base (AFB)

The WRC visited the surge facility at the Lackland Air Force Base in San Antonio, Texas, because it was the first time DCS had used a military base to house children and many advocates and media had concerns about this program.

## Tucson Sector CBP Stations

In Arizona, the WRC visited two Border Patrol short-term holding facilities, one located on the Tohono O’odham Nation and the other in Nogales. The WRC also visited a holding facility at the Nogales Port of Entry. Although the WRC was allowed to tour the facilities and interview staff, it was not permitted to interview detainees held at these facilities.



## Appendix D

### Excerpts from Mexican Migratory Act of May 25, 2011<sup>138</sup>

Lic. Gilda Valentina Barroso Rincón, Expert Translator, authorized by Superior Court of Justice of the Federal District.  
Council of the Federal District Judicature  
Boletín Judicial del 13/07/11

[...]

#### TITLE FOUR

##### REGARDING INTERNATIONAL HUMAN MOVEMENT AND FOREIGNERS' STAY IN MEXICO

[...]

#### CHAPTER II

##### REGARDING THE STAY OF FOREIGNERS IN MEXICO

Article 52. Foreigners may remain in Mexico as visitors, temporary residents, or permanent residents, provided they comply with the requirements established in this Law, its Regulations, and other applicable legal provisions, and in accordance with the following:

[...]

V. VISITOR FOR HUMANITARIAN REASONS. This lawful status is authorized to foreigners who fall under any of the following categories:

a) Those who are offended parties, victims, or witnesses of any crime committed in Mexico.

For the purpose of this Law, notwithstanding other applicable legal provisions, an offended party or victim is considered the person who is the passive subject of criminal conduct, independently of whether the perpetrator is identified, apprehended, judged, or sentenced, and regardless of the family relationship

between the perpetrator and the victim.

The offended party, victim, or witness of a crime who is authorized the lawful status of visitor for humanitarian reasons is authorized to remain in Mexico until the process has concluded, after which he or she must depart from the country or request a new lawful status. This person has the right to enter and depart from the country as many times as he or she wishes and may work in Mexico in exchange for remuneration. Afterward, he or she may request the lawful status of permanent resident.

b) Those who are unaccompanied migrant children or adolescents in the terms of Article 74 of this Law.

#### TITLE FIVE

##### REGARDING THE PROTECTION OF MIGRANTS IN TRANSIT THROUGH MEXICO

##### SOLE CHAPTER GENERAL PROVISIONS

Article 74. When in the best interests of the unaccompanied foreign migrant child or adolescent, such child or adolescent will be provisionally documented as a visitor for humanitarian reasons in the terms of Article 52, section V of this Law while the Department offers temporary or permanent humanitarian or legal alternatives to assisted return.

#### TITLE SIX

##### REGARDING ADMINISTRATIVE MIGRATORY PROCEDURE

#### CHAPTER VII

##### REGARDING THE PROCEDURE FOR ADDRESSING INDIVIDUALS IN VULNERABLE SITUATIONS

Article 112. When an unaccompanied migrant child or adolescent is handed over to the Institute, he or she will remain in its custody and respect for his or her human rights must be guaranteed, with specific adherence to the following:

I. The Institute will immediately channel the unaccompanied migrant child or adolescent to the National System for Integral Family Development and its state and Federal District systems in order to favor his or

her stay in places where he or she will be provided with adequate care while his or her migratory status is being resolved.

When, as a result of an exceptional circumstance, unaccompanied foreign migrant children and adolescents are held in a detention facility until they are transferred to the facilities of the National System for Integral Family Development and its state and Federal District systems, in such facility they must be assigned a specific space for their stay that is separate from the space allocated to the detention of adults. The authority must at all times respect the rights of unaccompanied migrant children and adolescents that are provided for in this Law and in applicable legislation.

- II. The child or adolescent will be informed of the reason for detention, his or her rights regarding the migratory procedure, the services to which he or she has access, and will be placed in contact with his or her country's consulate, except in the event in which, upon the Institute's judgment or the child or adolescent's request, he or she could attain political asylum or refugee status, in which case a consular representative will not be contacted.
- III. The consulate corresponding to the child or adolescent's nationality or residency will be notified of the location of the national or state System for Integral Family Development, or the detention facility, to which he or she was channeled and the conditions under which he or she is found, except in the event in which, upon the Institute's judgment or the child or adolescent's request, he or she could attain political asylum or refugee status, in which case a consular representative will not be contacted.
- IV. Institute personnel specializing in child protection and trained in child and adolescent rights will interview the child or adolescent for the purpose of learning his or her identity; country of nationality or residency; migratory status; family members' whereabouts; and specific protective, medical, and psychological needs.

A representative of the National Commission on Human Rights may be present at these interviews, in-

dependent of the authority that corresponds to the child or adolescent's legal representative or the person in which he or she confides.

- V. The child or adolescent's adult relatives will be sought out in coordination with the consulate of the country of which the child or adolescent is a citizen or resident, or the institution of the corresponding country that is assisting the child or adolescent, except in the event in which, upon the Institute's judgment or the child or adolescent's request, he or she could attain political asylum or refugee status, in which case a consular representative will not be contacted. In the event in which the child or adolescent falls into the categories established in Articles 132, 133, and 134 of this Law, he or she will have the right to the regularization of his or her migratory status.
- VI. Once a child or adolescent's migratory status has been ruled upon, and in the event in which the advisability of his or her assisted return has been ruled upon, this situation will be notified to the corresponding consulate with sufficient time for receiving the child or adolescent in his or her country of nationality or residency.

Assisted return of a migrant child or adolescent to his or her country of nationality or residency will be carried out in attention to the child's or adolescent's best interests and his or her vulnerable situation, with full respect for his or her human rights and with the participation of the competent authority of the country of nationality or residency.

## TRANSITORY ARTICLES

ONE. This Decree will enter into effect on the day after it is published in the Federal Official Gazette.

TWO. The reforms of the General Population Law will enter into effect on the day after they are published in the Federal Official Gazette, except for the partial repeals of Article 3, sections VII and VIII and Articles 7 through 75, which will not enter into effect until the Regulations of the Migratory Act do so.

## Appendix E

### Flores Excerpts Referenced in This Report

**Settled in 1996, Flores was intended to protect the rights and well-being of unaccompanied juveniles in INS custody. Stipulated Settlement Agreement, Flores v. Reno, Case No CV85-4544-RJK (C.D. Cal. 1996).** <sup>139</sup>

#### V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults.[...]

3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible;

B. For purposes of this Paragraph, the term “emergency” shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of mi-

nors). The term “influx of minors into the United States” shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an “emergency” or “influx,” as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs’ counsel with a copy of this listing.

#### VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor’s immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

[...]

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immi-

gration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be de novo review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).

### EXHIBIT 3

#### Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed programs licensed by an ap-

propriate state agency as expeditiously as possible. An emergency is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An influx is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.

2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.

3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

#### Exhibit 6

##### Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."



## Notes

<sup>1</sup> For a more extensive background and overview see the Women's Refugee Commission and Orrick's previous report, *Halfway Home: Unaccompanied Children in Immigration Custody* (February 2009), available at [http://www.womensrefugeecommission.org/docs/halfway\\_home.pdf](http://www.womensrefugeecommission.org/docs/halfway_home.pdf).

<sup>2</sup> See UAC definition in glossary.

<sup>3</sup> Data provided by the Division of Children's Services (DCS) (Referencing FYs 2009-2011). See Part 1, Chart 1.

<sup>4</sup> Olga Byrne and Elise Miller, Vera Institute for Justice, *Flow of Unaccompanied Children Through Immigration Custody*, p. 15 (March 2012), available at <http://www.vera.org/download?file=3483/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

<sup>5</sup> BP has apprehended between 16,000-20,000 UACs each year. Of those children apprehended some end up in the custody of the U.S. government. Others attempting to cross the border from Mexico may be immediately returned to Mexico.

<sup>6</sup> Both CBP and ICE are divisions of the Department of Homeland Security (DHS).

<sup>7</sup> Homeland Security Act of 2002, 6 U.S.C. § 462(g) (2) (2002).

<sup>8</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong., 2nd Sess. (2008).

<sup>9</sup> 8 U.S.C. § 1232(b) (3).

<sup>10</sup> 8 U.S.C. § 1232(a) (2). (There are on average only about 100 apprehended Canadian UACs. Most are apprehended by OFO.) Data provided by BP and OFO.

<sup>11</sup> A total of 7,306 in the first 7 months of FY12 in comparison to a total of 6,475 in FY2011, *supra* note 3.

<sup>12</sup> Jeffrey Passel, D'Vera Cohn and Ana Gonzalez-Barrera, "Net Migration from Mexico Falls to Zero—and Perhaps Less," Pew Research Center/Pew Hispanic Center, May 3, 2012, available at: <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>.

<sup>13</sup> *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996) at ¶12(C). (Settled in 1996, Flores Stipulated Settlement Agreement was intended to protect the rights and well-being of unaccompanied juveniles in INS custody.)

<sup>14</sup> Women's Refugee Commission and Orrick, *Halfway Home: Unaccompanied Children in Immigration Custody* (February 2009), available at [http://www.womensrefugeecommission.org/docs/halfway\\_home.pdf](http://www.womensrefugeecommission.org/docs/halfway_home.pdf).

<sup>15</sup> There have been many references to the lost boys of Sudan—this phenomena of lost children is occurring in other parts of the world.

We first noticed this phrase used to describe Central American children in an article by Melissa Del Bosque, "Central America's Lost Boys," *Texas Observer* (April 30, 2012), available at: <http://www.texasobserver.org/lalinea/central-americas-lost-boys>. Last accessed September 5, 2012.

<sup>16</sup> Addressing specific recommendations regarding the root causes for children fleeing Central America is beyond the scope of this report.

<sup>17</sup> The WRC provided a draft copy of this report to DHS for review and comment prior to publication. DHS responded that they disagree with our findings and conclusions.

<sup>18</sup> Mexican children are customarily repatriated or permitted to withdraw their application for admittance to the U.S. and are not transferred into ORR custody unless they have been found to lack the capacity to make such a decision or have been identified as at risk of persecution or trafficking. This is in accordance with contiguous country provision under the TVPRA. The overall apprehension rate of Mexican unaccompanied children, however, has stayed about the same. *Infra* n.20.

<sup>19</sup> Excerpt from data table provided by the Department for Children's Services to the Women's Refugee Commission.

<sup>20</sup> Data provided by Customs and Border Protection, (referencing FYs 2009-2011), available at [http://www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/usbp\\_statistics/apps\\_bycountry\\_may.ctt/apps\\_bycountry\\_may.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/apps_bycountry_may.ctt/apps_bycountry_may.pdf). Last accessed September 5, 2012. See also, INM's data on Mexican repatriation of minors. Between January and July there were: 10,687 repatriated events of all children in 2012; 9,864 repatriated events of all children in 2011; and 14,332 repatriated events of all children in 2010; available at: [http://www.inm.gob.mx/estadisticas/2012/julio/cuadro\\_5.2.xls](http://www.inm.gob.mx/estadisticas/2012/julio/cuadro_5.2.xls); [http://www.inm.gob.mx/estadisticas/2011/diciembre/cuadro\\_5.2.xls](http://www.inm.gob.mx/estadisticas/2011/diciembre/cuadro_5.2.xls); [http://www.inm.gob.mx/estadisticas/2010/cuadro\\_5.2.xls](http://www.inm.gob.mx/estadisticas/2010/cuadro_5.2.xls).

<sup>21</sup> Interview by Jennifer Podkul, June 5, 2012 (the interviewee's name and location are omitted to protect their identity).

<sup>22</sup> To learn more, see the documentary film *Which Way Home* (HBO Documentary Films, 2009).

<sup>23</sup> Interview by Jennifer Podkul, June 5, 2012 (the interviewee's name and location are omitted to protect their identity).

<sup>24</sup> Central Intelligence Agency, *World Fact Book: Honduras*, last updated June 20, 2012, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html>; "The Eye of the Storm: Timid Steps to Tame the World's Most Violent Country," *The Economist*, June 16, 2012, available at <http://www.economist.com/node/21556914>.

<sup>25</sup> Human Rights Watch, *World Report 2010: Honduras Country Summary* (January, 2009), available at <http://www.hrw.org/en/>

node/87525; Geoffrey Ramsey, "Honduras: Home to the Most Violent City in the Hemisphere?" *The Christian Science Monitor*, Jan. 18, 2012, available at <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2012/0118/Honduras-home-to-the-most-violent-city-in-the-hemisphere>.

<sup>26</sup> Michael Shifter, Council on Foreign Relations, *Countering Criminal Violence in Central America*, Council Special Report No. 64, 6-7 (Apr. 2012), available at <http://www.cfr.org/central-america/countering-criminal-violence-central-america/p27740>.

<sup>27</sup> Cesar Panting, "El 54% de los muertos en Honduras este 2012 han sido juvenes," *Apertura*, May 8, 2012, available at <http://www.laprensa.hn/Secciones-Principales/Honduras/Apertura/El-54-de-los-muertos-en-Honduras-este-2012-han-sido-juvenes>.

<sup>28</sup> Inter-America Commission on Human Rights, *Honduras: Human Rights and the Coup D'Etat*, OEA/Ser.L/V/II, Doc. 55, para. 232 (Dec. 30, 2009), available at <http://www.cidh.org/countryrep/Honduras09eng/Toc.htm>; Human Rights Watch, *World Report 2012: Honduras Country Summary* (Jan. 2012), available at <http://www.hrw.org/world-report-2012/world-report-chapter-honduras>.

<sup>29</sup> Stephen Sackur, "Honduras Counts the Human Rights Cost of America's War on Drugs," *The Guardian*, July 15, 2012, available at <http://www.guardian.co.uk/world/2012/jul/15/honduras-human-rights-war-drugs>; Charlie Savage, "Man is Killed by U.S. Agent in Drug Raid in Honduras," *The New York Times*, June 24, 2012, available at <http://www.nytimes.com/2012/06/25/world/americas/dea-agents-kills-suspected-smuggler-in-honduran-drug-raid.html>.

<sup>30</sup> Damian Cave, "Honduran Villages Caught in Drug War's Cross-Fire," *New York Times*, May 23 2012.

<sup>31</sup> Sandra Marina Johnson, Interview with Honduran Defense Minister Marlon Pascua, *Diálogo*, Apr. 25, 2012, available at [http://www.dialogo-americas.com/en\\_GB/articles/rmsa/features/regional\\_news/2012/04/25/feature-ex-3079](http://www.dialogo-americas.com/en_GB/articles/rmsa/features/regional_news/2012/04/25/feature-ex-3079).

<sup>32</sup> "The Eye of the Storm," supra note 24; U.S. Department of State, *Country Reports on Human Rights Practices for 2011: Honduras* (2011) available at <http://www.state.gov/j/drl/rls/hrrpt/humanright-report/index.htm#wrapper>.

<sup>33</sup> Annie Kelly, "Honduran Police Turn a Blind Eye To Soaring Number of 'Femicides,'" *The Guardian* (May 28, 2011), available at <http://www.guardian.co.uk/world/2011/may/29/honduras-blind-eye-femicides>.

<sup>34</sup> Oxfam Honduras, *Informe Final Femicidios en Honduras: Impunidad y La Guerra Contre les Mujeres 10* (March 2011), available at [http://www.revistazo.biz/cms/images/stories/Informe\\_femicidios\\_Honduras.pdf](http://www.revistazo.biz/cms/images/stories/Informe_femicidios_Honduras.pdf).

<sup>35</sup> Immigration of Refugee Board of Canada, *Honduras: Femicide and Spousal and Sexual Abuse, and Services Provided to the Victims* (2009-2011), (February 2011), available at <http://www.unhcr.org/refworld/country,,IRBC,,HND,,4f4353d32,0.html>.

<http://www.unhcr.org/refworld/country,,IRBC,,HND,,4f4353d32,0.html>.

<sup>36</sup> Central Intelligence Agency, *World Fact Book: El Salvador*, last updated Jun. 20, 2012, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/es.html>.

<sup>37</sup> Edgardo Ayala, "Schoolchildren and Teachers Under Fire in El Salvador," *Inter Press Service*, Mar. 13, 2012, available at <http://www.ipsnews.net/2012/03/schoolchildren-and-teachers-under-fire-in-el-salvador/>; Rene Olate, *Predictors of Violence and Delinquency Among High Risk Youth and Youth Gang Members in San Salvador*, *El Salvador*, 55 J. Int'l Social Work 383 (2012).

<sup>38</sup> *Countering Criminal Violence in Central America*, supra note 26.

<sup>39</sup> Edgardo Ayala, "Schoolchildren and Teachers Under Fire in El Salvador," *Inter Press Service*; Edgardo Ayala, "Gangs may be Scapegoat for Soaring Murder Rate," *Inter Press Service*, Jan. 25, 2012, available at <http://www.ipsnews.net/2012/01/el-salvador-gangs-may-be-scapegoat-for-soaring-murder-rate/>; see also Amnesty International, *Amnesty International Annual Report 2011 – El Salvador*, May 13, 2011, available at <http://www.unhcr.org/refworld/country,,AMNESTY,,SLV,,4dce156e44,0.html>.

<sup>40</sup> Marcos Aleman, "El Salvador Gangs Seek Permanent Cease-fire," *The Globe and Mail*, June 20, 2012, available at <http://www.theglobeandmail.com/news/world/el-salvador-gangs-seek-permanent-ceasefire/article4358935/?cmpid=rss1>.

<sup>41</sup> Seth Jesse, Representative for El Salvador, Inter-America Foundation, telephone interview with country expert, July 9, 2012.

<sup>42</sup> Hannah Stone, "Violence Against Women Rises in El Salvador," *The Christian Science Monitor*, May 24, 2011, available at <http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/0524/Violence-against-women-rises-in-El-Salvador>.

<sup>43</sup> Fernando Romero, Ernesto Perez & Suchit Chavez, "13 homicidios cada dia en lo que va del mes," *La Prensa Grafica*, Apr. 20, 2011, available at <http://www.laprensagrafica.com/el-salvador/judicial/186019-13-homicidios-cada-dia-en-lo-que-va-del-mes.html>.

<sup>44</sup> The Immigration and Refugee Board of Canada, *El Salvador: Violence Against Women, Legislation, and the Protection Offered to Victims (2007-2009)* (July 2009), available at <http://www.unhcr.org/refworld/country,,,QUERYRESPONSE,SLV,,4a7040b92,0.html>.

<sup>45</sup> Central Intelligence Agency, *World Fact Book: Guatemala*, last updated Jun. 20, 2012, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html>.

<sup>46</sup> Danilo Valladeres, "Central America: Rampant Violence Means Childhood Interrupted," *Inter Press Service*, Jul. 6, 2010, available at <http://www.ipsnews.net/2010/07/central-america-rampant-violence-means-childhood-interrupted/>; Romina Ruiz-Goirierna, "Gua-

temalan Gangs Join Forces with Mexican Drug Cartel,” *Deseret News*, Apr. 7, 2012, available at <http://www.deseretnews.com/article/765566864/Guatemalan-gang-joins-forces-with-Mexican-drug-cartel.html?pg=all>. See also Immigration and Refugee Board of Canada, *Guatemala: Violence Perpetrated by Criminal Gangs and Cases of Popular Justice; Protection Offered by the State* (2008-March 2012), (May 7, 2012), available at <http://www.unhcr.org/refworld/country,,,GTM,,4fc4a9962,0.html>; Sebastian Rotella, “Guatemalan Massacre Survivor Wins Political Asylum in U.S.,” *Pro-pública*, available at <http://www.propublica.org/article/guatemalan-massacre-survivor-wins-political-asylum-in-u.s>.

<sup>47</sup> Deborah Bonello, “‘Green Hunger’ as Starvation Stalks Fertile Guatemala,” *Agence France-Presse* (Aug. 8, 2011), available at <http://www.google.com/hostednews/afp/article/ALeqM5gXUv5sWfZTJ-IHKTgD4XQrln5geg?docId=CNG.6f08b4fcf043d70be37b9edd855f5ee0.31>.

<sup>48</sup> Groundswell, *Guatemala Agricultural Situation*, 2011, available at <http://www.groundswellinternational.org/where-we-work/guatemala/>.

<sup>49</sup> Oxfam, *Sowing Seeds: Opportunities and Challenges Facing U.S. Assistance for Food Security in Guatemala*, May 12, available at <http://reliefweb.int/sites/reliefweb.int/files/resources/Guatemala%20paper%20on%20FTF%20-%20Oxfam%20May%202012%20FINAL.pdf>.

<sup>50</sup> Hal Brands, *Crime, Violence, and the Crisis in Guatemala: A Case Study in the Erosion of the State* (May 2010), available at <http://www.strategicstudiesinstitute.army.mil/pdf/files/PUB986.pdf>; see also International Crisis Group, *Guatemala: Drug Trafficking and Violence* (Oct. 11, 2011), available at <http://www.crisis-group.org/en/regions/latin-america-caribbean/guatemala/139-guatemala-drug-trafficking-and-violence.aspx>.

<sup>51</sup> Karen Musalo, Elisabeth Pellegrin & Shawn Roberts, “Crimes Without Punishment: Violence Against Women in Guatemala,” *21 Hastings Women’s Law Journal* 161, 213 (2010), available at [http://cgrs.uchastings.edu/pdfs/MUSALO%20Final%204\\_19.pdf](http://cgrs.uchastings.edu/pdfs/MUSALO%20Final%204_19.pdf).

<sup>52</sup> David Carrey, Jr. & M. Gabriela Torres, “Precursors to Femicide: Guatemalan Women in a Vortex of Violence,” *45 Latin American Research Review* 142, 142-43 (2010). See also “Violence Against Women and Asylum Seeking: Global Problems and Local Practices Applied to Guatemalan Women Immigrating for Safety,” *Advances in Social Work*, vol. 13, no. 2 (2012), available at <http://journals.iu-pui.edu/index.php/advancesinsocialwork/article/view/1974/2465>.

<sup>53</sup> Nathalie Jo Velasco, “The Guatemalan Femicide: An Epidemic of Impunity,” *14 Law & Bus. Rev. Am.* 397, 413 (2008).

<sup>54</sup> UNHCR, *Guidance Note on Refugee Claims relating to victims of Organized Gangs* (March 2010), available at <http://www.unhcr.org/refworld/docid/4bb21fa02.html>. Last accessed September 5, 2012.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.* Imputed political opinions are opinions that are attributed to the applicant by authorities and not necessarily the actual opinion of the asylum seeker, see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1992) at ¶ 80, online at: <http://www.unhcr.org/refworld/docid/3ae6b3314.html>. Last accessed September 5, 2012.

<sup>57</sup> See generally, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, (A/64/254 August 6, 2009).

<sup>58</sup> As of July 2012 during the writing of this report, US Citizenship and Immigration Services statistics have not yet demonstrated an increase in UAC asylum claims. This is due to the fact that the children who have come during this influx have not yet had access to legal counsel to aid them in the filing of an asylum application. It is important to note UACs are excluded from the one year filing deadline and we suspect asylum applications from these recent UAC entrants will increase in the coming months.

<sup>59</sup> *Matter of S-E-G-*, 24 I. & N. Dec. 582 (BIA 2008) and *Matter of E-A-G-*, 24 I. & N. Dec. 591 (BIA 2008). See also, “In Spite of Plea, Young Man Deported to Honduras and Killed by Gangs,” *Univision News* (April 30, 2012), video available at: [http://www.youtube.com/watch?v=Qns0HWI\\_ky0](http://www.youtube.com/watch?v=Qns0HWI_ky0). Last accessed September 19, 2012.

<sup>60</sup> *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 150, (implemented in U.S. law at section 101(a) (42) of the Immigration and Nationality Act (“INA”)), and Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 (implemented in U.S. law at 8 U.S.C. §31101(a) (42)).

<sup>61</sup> Nathan Koppel, “Child Immigration is Rising,” *Wall Street Journal*, May 7, 2012, available at <http://online.wsj.com/article/SB10001424052702303630404577390461260565008.html>.

<sup>62</sup> Elba Coria Marquez, Mexican attorney and Program Officer for the Americas Regional Office, International Detention Coalition (IDC), telephone interview (July 3, 2012).

<sup>63</sup> Artículo 52, 74, 112 de la Ley de Migración (May 25, 2011), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf>. See also Appendix B. A full English version may be obtained by emailing the WRC at [info@wrccommission.org](mailto:info@wrccommission.org).

<sup>64</sup> According to Elba Coria Marquez, IDC, with the exception of a few cases in Tapachula, Chiapas, this transfer has not been implemented. See Artículo 112, *supra* note 61.

<sup>65</sup> Instituto Nacional de Migración, *Eventos de extranjeros alojados en estaciones migratorias*, 2010, 2011 and 2012, available at [http://www.inm.gob.mx/estadisticas/2010/cuadro\\_3.1.2.xls](http://www.inm.gob.mx/estadisticas/2010/cuadro_3.1.2.xls), [http://www.inm.gob.mx/estadisticas/2011/diciembre/cuadro\\_3.1.3.xls](http://www.inm.gob.mx/estadisticas/2011/diciembre/cuadro_3.1.3.xls) and [http://www.inm.gob.mx/estadisticas/2012/mayo/cuadro\\_3.1.3.xls](http://www.inm.gob.mx/estadisticas/2012/mayo/cuadro_3.1.3.xls).

These numbers reflect the number of monthly apprehensions of all minors under the age of 18.

<sup>66</sup> Ariadna García, “Crece deportación a CA de niños migrantes,” *El Universal*, September 5, 2012, available at: <http://movil.eluniversal.com.mx/notas/nacion/868443.html>, see also, Verónica Macías, “Crece devolución de niños migrantes al país,” *El Economista*, September 5, 2012, available at: <http://eleconomista.com.mx/sociedad/2012/09/05/crece-devolucion-ninos-migrantes-pais>.

<sup>67</sup> Artículo 74 de la Ley de Migración, supra n 63.

<sup>68</sup> This data shows the number of detentions of all minors (not just unaccompanied), supra note 64.

<sup>69</sup> Countering Criminal Violence in Central America, supra note 26; see also Valeria Perasso, *Young Migrants Make Perilous US-Mexico Journey* (BBC Mundo, June 12, 2012) and Adam Isacson, *Border Fact Check blog* (WOLA June 18, 2012), available at <http://borderfactcheck.tumblr.com/post/25370013202/there-already-are-more-undocumented-children-sheriff>.

<sup>70</sup> The U.S. border enforcement policies potentially “sealing in” parents apply universally to Mexican and Central American families.

<sup>71</sup> These gaps are measured against child welfare best practices and international human rights instruments. See Appendix A for more.

<sup>72</sup> The U.S. should also look to international humanitarian law and practices that have developed a rights framework and models for the custody of UACs. See generally, Corlett, D., et al, *Captured Childhood* (International Detention Coalition 2012), online at: <http://idcoalition.org/ccap/>; *Migration and International Human Rights Law: Practitioners Guide No. 6* (International Commission of Jurists Geneva 2011).

<sup>73</sup> For a complete description of detention programs UACs encounter, see Appendix F in *Halfway Home*, supra note 1. For a definition of detention and UNHCR guidelines on detention, see *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, UNHCR, September 2012, available at: <http://www.unhcr.org/ref-world/docid/503489533b8.html>.

<sup>74</sup> Data provided by DCS.

<sup>75</sup> Case managers may have been assigned to work on reunification/transfer issues; however, the child was often unaware this was happening behind the scenes.

<sup>76</sup> ORR refutes this assertion, stating the children had daily access to outdoor recreation, email August 21, 2012. A boys’ cottage was constructed shortly before the WRC arrived and the boys were moved out of the gym for sleeping.

<sup>77</sup> Department of Health and Human Services, Administration for Children and Families, *Refugee and Entrant Assistance: Justifica-*

*tion of Estimates for Appropriations Committees*, p. 256 (2011) (mentions 250 mile requirement only), available at [www.acf.hhs.gov/programs/olab/budget/2011/ORR.pdf](http://www.acf.hhs.gov/programs/olab/budget/2011/ORR.pdf); also discussed in Sen. Rpt.111-243 at 150 (August 2, 2010), available at: <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt243/pdf/CRPT-111srpt243.pdf>. By 2016, beds along the border are to increase by 75%. This directive for a percentage increase came from OMB’s 2009 report to the subcommittee on Homeland Security Appropriations’ Request for Recommendations on Unaccompanied Alien Children Transportation. (To the WRC’s knowledge, this is not available online). The percentage requirement was also separately verified by government officials.

<sup>78</sup> For a detailed description of DCS oversight and monitoring see *Halfway Home*, supra note 1 at 24-31, 33-34, 39. DCS still needs to implement some of the Office of the Inspector General’s recommendations regarding interviewing children and legal representatives regarding concerns.

<sup>79</sup> Interviews with children in October 2011 and June 2012. See also, *Halfway Home*, supra note 1 at 32-33.

<sup>80</sup> From conversations with attorneys in 2011 and 2012. See also, *Halfway Home*, supra note 1 at 33. For a list of ORR legal service providers at facilities, see Vera Institute for Justice, *Division of Unaccompanied Children’s Services (DUCS) Legal Access Project* (2011), available at [http://www.vera.org/files/ducs-legal-access-project-pro-bono-referral-resource-guide\\_0.pdf](http://www.vera.org/files/ducs-legal-access-project-pro-bono-referral-resource-guide_0.pdf).

<sup>81</sup> *Flores Settlement*, supra note 13 at 24B, 24D, and Exhibit 6. See also Appendix C.

<sup>82</sup> See international and domestic child welfare standards, Appendix A.

<sup>83</sup> From our own observations after interviews with children, staff and legal service providers.

<sup>84</sup> Susan Watson, David R. Walding and anonymous attorneys, telephone interview, May 31, 2012.

<sup>85</sup> Conversation with BCFS staff August 2, 2012.

<sup>86</sup> The Women’s Refugee Commission obtained a copy and confirmed that the only attorneys listed in the DCS Legal Resource Guide are the ORR sub-contracted legal service providers.

<sup>87</sup> I.N.A. § 239(b) (2006), 8 U.S.C. § 1229, requiring the Attorney General to provide lists of pro bono counsel to those in removal proceedings and 8 C.F.R. 1240.10(a) (1)-(3) (2005). *Flores* states “A list of free legal service providers compiled pursuant to INS regulation,” supra note 13 at 24(D), see also Appendix C.

<sup>88</sup> Article 37 of the Convention also states that the detention of children should be as a last resort and only for the shortest appropriate period of time. See Convention on the Rights of the Child (hereinafter Convention), Sept. 2 1990, 1577 U.N.T.S. 3, art. 12 (1990) and United Nations Committee on the Rights of the Child,



General Comment 6: The Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc CRC/GC/2005/6 at ¶ 2 (Sept. 1, 2005).

<sup>89</sup> Data provided by DCS.

<sup>90</sup> The backlog does not include home studies; referrals actually went down during the surge. Confidential conversation with a post-release service provider, telephone interview (June 28, 2012).

<sup>91</sup> 8 U.S.C. § 1232(c) (3) (B).

<sup>92</sup> Ethical Standard 1.16 Termination, Code of Ethics of the National Association of Social Workers (approved by the 1996 NASW Delegate Assembly and revised by the 2008 NASW Delegate Assembly), available at <http://www.socialworkers.org/pubs/code/code.asp>.

<sup>93</sup> Supra note 9, codified at § 1232(b) (3).

<sup>94</sup> Interview by Jessica Jones, June 7, 2012.

<sup>95</sup> Interview by Jennifer Podkul, June 4, 2012.

<sup>96</sup> To read more about CBP abuse of migrants, see *A Culture of Cruelty, No More Deaths* (September 2012), available at <http://www.nomoredeaths.org/cultureofcruelty.html>; *Halfway Home*, supra note 1; Appleseed, *Children at the Border* (2011), available at <http://appleseednetwork.org/LinkClick.aspx?fileticket=8PM-o8WHN1Q%3D&tabid=157>; The Center for Public Policy Priorities <http://www.cppp.org/repatriation/A%20Child%20Alone%20and%20Without%20Papers.pdf>; KIND, "The Measure of a Society: The Treatment of Unaccompanied Refugee and Immigrant Children in the U.S.," *Harvard Civil Rights-Civil Liberties Law Review*, <https://www.supportkind.org/kind-in-the-media/reports>; DHS OIG, "CBP's Handling of Unaccompanied Alien Children" [http://www.oig.dhs.gov/assets/mgmt/oig\\_10-117\\_sep10.pdf](http://www.oig.dhs.gov/assets/mgmt/oig_10-117_sep10.pdf); No More Deaths, *Crossing the Line: Human Rights Abuses of Migrants in Short-Term Custody on the Arizona/Sonora Border*, <http://www.nomoredeaths.org/Abuse-Report-Crossing-the-Line/View-category.html>.

<sup>97</sup> *Halfway Home*, Supra note 1.

<sup>98</sup> Interview with No More Deaths volunteers and CBP staff in Tucson, AZ, May 23, 2012.

<sup>99</sup> WRC does not have additional specifics because access to visit the CBP Station in Brownsville was denied.

<sup>100</sup> Interview by Jennifer Podkul, BCFS Harlingen, June 5, 2012.

<sup>101</sup> Every child who reported abuse or mistreatment by CBP was told that WRC could help them file a complaint to CBP. Because CBP only has an online complaint system and the children did not have Internet access in detention, the children were not able to file complaints on their own and most did not know there was any mechanism at all to be able to file a complaint. The WRC filed four complaints at the request of four children. At the time of publication

of this report, approximately three months after the complaints had been filed, WRC had not received any response to the complaints.

<sup>102</sup> This conclusion came from several conversations with CBP agents based on their understanding of procedure and the definitions of trafficking and persecution. Interview by Jessica Jones, El Paso CBP Station, November 17, 2011, and interviews by Jennifer Podkul, Nogales POE, El Paso CBP Station, May 23, 2012. Interviews by Michelle Brané, El Paso CBP station, February 19, 2011.

<sup>103</sup> Mandated under the Trafficking Victims Protection Reauthorization Act (TVPA), 8 USCS § 1232(a). For CBP screening failures, read the WRC report *Halfway Home*, supra note 1. The WRC's findings were also confirmed by Appleseed's report, *Children at the Border* (2011), available at <http://appleseednetwork.org/LinkClick.aspx?fileticket=8PM-o8WHN1Q%3D&tabid=157>. See also *Measuring Border Security: Hearing on U.S. Border Patrol's New Strategic Plan and the Path Forward Before the House Subcommittee on Border and Maritime Security*, 112th Congress (2012) (statement of Marc Rosenblum, Immigration Policy Specialist, Congressional Research Service); U.S. Government Accountability Office, *Border Patrol Strategy: Progress and Challenges in Implementation and Assessment Efforts*, No. 12-888T (May 8, 2012); Washington Office of Latin America, *Beyond the Border Buildup*, p. 48 (April, 2012).

<sup>104</sup> Interviews by Jennifer Podkul and Jessica Jones with CBP officials, Harlingen, TX, June 2012.

<sup>105</sup> The Homeland Security Act of 2002, P.L. No. 107-296, codified in part at 8 U.S.C. § 1232 (custody and transfer responsibilities of HHS and DHS).

<sup>106</sup> Supra note 77.

<sup>107</sup> A removal order instituted after a hearing without the person present despite proper notice. See, Kurzban, *Immigration Law Sourcebook* (AILA 2008, 11th ed.) at 383.

<sup>108</sup> Some advocates believe DHS must serve the NTA on the court immediately to ensure there is some mechanism to check the appropriateness of the detention of the child. The WRC disagrees and does not believe an appropriate review on a child's detention would happen during routine Master Calendar Hearings in Immigration Court. Supra note 80.

<sup>109</sup> This was first suggested to the WRC by an advocate that represents children.

<sup>110</sup> Moreover, EOIR was restricted in what its LOPC programs could cover, for example, they were prohibited from using their LOPC funding to provide information on the legal case of the sponsor or assisting the sponsor with the reunification materials.

<sup>111</sup> FY13 appropriations request an increase for the LOP overall program, but this will not include any increase for the LOPC program.



<sup>112</sup> Steve Lang, interview by Jennifer Podkul and Jessica Jones, June 27, 2012.

<sup>113</sup> Currently, some courts have a juvenile docket and already allow LOPC and other service providers to use courthouse space to conduct screenings and provide information on important services to the UACs and their custodians. This is a best practice that can be replicated in all EOIR courts.

<sup>114</sup> 8 U.S.C. § 1362.

<sup>115</sup> To read more about this see the article by Julia Preston, "Young and Alone, Facing Court and Deportation," *New York Times* (August 25, 2012), available at: <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html?pagewanted=all&.moc.semityn.www>.

<sup>116</sup> *Idem*, and *supra* note 4.

<sup>117</sup> This is in part because no data is collected on children who commenced with an attorney and then went *pro se*, or vice versa. WRC attempted to collect data both from EOIR and Transactional Records Access Clearinghouse at Syracuse University only to discover the data inconsistencies.

<sup>118</sup> Convention on the Rights of the Child (hereinafter Convention), Sept. 2 1990, 1577 U.N.T.S. 3, art. 12 (1990) and United Nations Committee on the Rights of the Child, General Comment 6: *The Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, U.N. Doc CRC/GC/2005/6 at ¶33 (Sept. 1, 2005). For models in other countries, see Appendix H in *Halfway Home* (Norway, Sweden and Switzerland provide legal services to unaccompanied children).

<sup>119</sup> *Idem*.

<sup>120</sup> Convention on the Rights of the Child (hereinafter Convention), Sept. 2, 1990, 1577 U.N.T.S. 3, art. 12 (1990). See generally throughout the Convention at: art. 2, 8, 12-13, 23, 40, 41.

<sup>121</sup> United Nations Committee on the Rights of the Child, General Comment No. 12, The Right of the Child to Be Heard, U.N. Doc CRC/C/GC/12 at ¶ 2 (May 3, 2009).

<sup>122</sup> Convention at Art 37(d); *Guidelines for Alternative Care of Children*, GA Res. 64/142, 64th Sess. A, at ¶ 6 U.N. Doc A/RES/64/434 (Feb 24, 2010); *UNHCR Guidelines on Determining the Best Interests of the Child*, p. 51-52, 62, Annex 9 UNHCR (2008); *Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children*, American Bar Association, at Section D: Best Interests of the Child Rule 2 and 12-13. (Aug. 2004); Bridgette Carr, "Incorporating a Best Interests of the Child Approach into Immigration Law and Procedure," *12 Yale Hum. Rts. & Dev. L.J.* 120 (2009); Christopher Nugent, "Whose Children are These? Towards Ensuring the Best Interests and Empowerment of UAC," *15 B.U. Pub. Int. L.J.* 219 (Spring 2006); Jean Koh Peters, "The Roles and Content of Best

Interests in Client-Directed Lawyering for Children in Child Protective Proceedings," *64 Fordham L. Rev.* 1505, 1522, 1525-1527, 1555 (March 1996); Sonja Starr and Lea Brilmayer, "Family Separation as a Violation of International Law," *21 Berkeley J. Int'l L.* 213 (2003); Jane Ellis, "The Best Interests of the Child," in *Children's Rights in America* (Cynthia P. Cohen and Howard A. Davidson eds., 1990).

<sup>123</sup> United Nations Committee on the Rights of the Child, General Comment No. 7: Implementing Child Rights in Early Childhood, 14 (Sept. 20, 2006); Jean Koh Peters at 1525-27 ("For the client who cannot be counseled, e.g., the baby, the nonverbal child, or the child with a severe intellectual deficit, best interests plays the biggest role of all [because this process is] . . . somewhat independent of the client's input." Koh Peters argues there is a difference in the way that we take the child's views into account based on age.); Christopher Nugent, "Whose Children are These? Towards Ensuring the Best Interests and Empowerment of UAC," *15 B.U. Pub. Int. L.J.* 219 (Spring 2006) (good faith effort should be made to ascertain a child's viewpoint even when the child faces psychological or mental disabilities).

<sup>124</sup> *A Child's Right to Counsel: A National Report Card for Legal Representation of Abused and Neglected Children*, First Star and Children's Advocacy Institute (2nd ed. 2009) (approximately 25 states mandate that the child's express wishes must be a consideration). See generally, *Representation of Children in Child Abuse and Neglect Proceedings: Summary of State Laws* (DHHS, Child Welfare Information Gateway, May 2009).

<sup>125</sup> United Nations Committee on the Rights of the Child, *General Comment 6: The Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, U.N. Doc CRC/GC/2005/6 at ¶33 (Sept. 1, 2005).

<sup>126</sup> Currently only juvenile defendants have a guarantee to court-appointed counsel. In *re Gault*, 387 U.S. 1 (1967), but see, *Lassiter v. Dep't of Soc. Serv.*, 452 U.S. 18, 27 (1981) ("...that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty"). Children in child abuse and neglect proceedings have a right to a *guardian ad litem* or court-appointed special advocate who may be lawyers, but who are mandated to obtain firsthand what the child's needs are. Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. § 5106a(b) (2) (B) (xiii).

<sup>127</sup> For example, using a best interest of the child lens video-teleconferencing (VTC) does not permit a child to meaningfully participate. For adequate participation a child should always have an attorney in legal proceedings.

<sup>128</sup> In determining best interests of the child, the child's safety is of paramount concern. *Determining the Best Interests of the Child: Summary of State Laws*, (Current through Mar. 2010); *UNHCR Guidelines on Determining the Best Interests of the Child*, 35

(2008) (This section makes reference to imminent risk that child may face and potential abuse and neglect by family members.); *Guidelines for Alternative Care of Children* at ¶ 4 (GA Res. 64/142, Feb 24, 2010).

<sup>129</sup> Supra note 118 at art. 3, 6, 11, 19, 20, 24-28, 32-38.

<sup>130</sup> Supra note 118 at art. 3, 5, 8, 10, 14-16, 18, 23, 29, 30, 31; see also, Comment 6 to the Convention at ¶ 13, supra note 118.

<sup>131</sup> *Guidelines for Alternative Care of Children* at ¶ 7, supra note 114.

<sup>132</sup> *UNHCR Guidelines* at 71, supra note 122.

<sup>133</sup> ABA at 13, supra note 122.

<sup>134</sup> Consideration of these relationships most likely makes the most sense in phone calls, visitation, and sponsor choices. For a discussion of these models see, Peters, 64 *Fordham L. Rev.* at 1537-3570, discussing, Joseph Goldstein et al., *Beyond the Best Inter-*

*ests of the Child* (Simon and Schuster 1973) (psychological parent model) and Peggy Cooper Davis, "The Good Mother: A New Look at the Psychological Parenting Theory," 22 *N.Y.U. Rev. L. & Soc. Change* 347 (1996) (family network model).

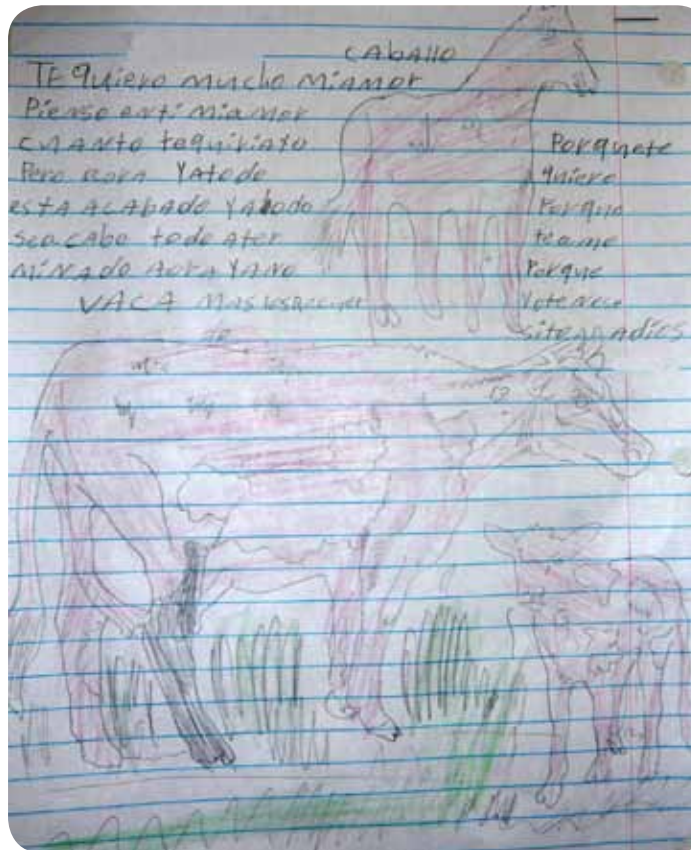
<sup>135</sup> For instance if a child's parent is undocumented, this could create serious psychological stress on the child. A court should therefore not require the parent to attend.

<sup>136</sup> Data provided by DCS. See also Chart 5.

<sup>137</sup> Data provided separately by OFO and BP. See also Chart 6.

<sup>138</sup> Available at [http://dof.gob.mx/nota\\_detalle.php?codigo=5190774&fecha=25/05/2011](http://dof.gob.mx/nota_detalle.php?codigo=5190774&fecha=25/05/2011).

<sup>139</sup> Available at <http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749>; and in *Halfway Home* Appendix I, available at: [http://womensrefugeecommission.org/docs/halfway\\_home.pdf](http://womensrefugeecommission.org/docs/halfway_home.pdf).



Child's drawing, Lackland Airforce Base.

The text reads:

Left: Horse I love you so much my love. I think of you my love. How much I love you. But, now everything is over already everything is finished (not legible). Now the cow I no longer remember.

Right: Because I love you, because I love you because I need you. Good-bye.







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