

January 22, 2015

The Honorable Alejandro Mayorkas
Deputy Secretary
Department of Homeland Security
Washington, D.C. 20528

Re: Child welfare professionals at CBP border stations

Dear Deputy Secretary Mayorkas:

Thank you for considering adding child welfare professional positions for Customs and Border Protection (CBP) stations at the southwest border. For your purposes, we have included background on the need for this position as well as recommendations for the duties and responsibilities for the position itself, based on the recommendations set forth in the Child Trafficking Victims Protection Act (H.R. 2624/ sections 1112 and 3611 of S. 744, 113th Congress) and Protect Families at the Border Act (H.R. 3130/ section 1115 of S. 744, 113th Congress).

Background

CBP is often the first point of contact for children migrating to the United States. With both the rising numbers of unaccompanied children and accompanied children migrating to the United States in the past two years, CBP has become responsible for processing an increasing number of child migrants.

The child welfare professional should oversee the general custody and care of all children in CBP stations, including monitoring and reporting of abuse or mistreatment. The abuse and mistreatment of children in the custody of CBP, which several nongovernmental organizations (NGOs) have found to be systematic, especially warrant a person with child welfare expertise as well as a forensic and trauma-informed background, as numerous civil rights complaints and human rights reports have demonstrated.¹ For example, on June 11, 2014, the ACLU and other groups filed a joint complaint on behalf of 116 children, reporting abuse and mistreatment while in CBP custody.² The abuse documented included verbal, sexual, and physical allegations along

¹ See, e.g., National Immigrant Justice Center, *Unaccompanied Immigrant Children: A Policy Brief* (January 2014), available at <http://bit.ly/1o2RT4B>; Women's Refugee Commission, *Forced From Home: The Lost Boys and Girls of Central America* (October 2012) available at <http://bit.ly/1idNuUo>; No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, (2011,) available at <http://bit.ly/1prx9z>; Betsy Cavendish and Maru Cortazar, *Appleseed, Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (2011), available at <http://bit.ly/1mt5hbi>; Florence Immigrant and Refugee Rights Project, *Seeking Protection, Enduring Prosecution: The Treatment and Abuse of Unaccompanied Undocumented Children in Short-term Immigration Detention*, (2009), available at <http://bit.ly/1prCKx>; Women's Refugee Commission, *Halfway Home: Unaccompanied Immigrant Children in Immigration Custody* (2008) available at <http://bit.ly/1hvPc8M>

² "Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection," (June 11, 2014), available at <http://tinyurl.com/q6acxe2>

with prolonged detention and lack of necessities, and noted the failure of DHS oversight agencies to respond appropriately to allegations of abuse.³ Congressional delegations have also reported observing CBP abuse and mistreatment of children.⁴

In addition to overseeing the care and custody of children, child welfare professionals should be charged with the protection screenings of children. According to Section 235(a) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the Department of Homeland Security (DHS) is responsible for ensuring that unaccompanied children from contiguous countries, Mexico and Canada, are screened as possible victims of trafficking or at risk of trafficking, for a fear returning home because of possible persecution, and to ensure they are able understand the process.⁵ If they are unable to make a determination within 48 hours, CBP must automatically refer a child to the Office of Refugee Resettlement (ORR). With the lack of resources and appropriate training, efforts by CBP to appropriately and consistently screen children have been ineffectual, depriving vulnerable children of appropriate care and due process.⁶

Although it is not required by law, CBP has made *all* unaccompanied children subject to interviewing, including children from non-contiguous countries, for three things: trafficking, fear of return, and capacity for independent decision-making. The screening entails very sensitive questions and can include traumatic interrogation. It is unclear why CBP decided to have its officers and agents make all children subject to screening using the Form 93 when the law only requires this for children from contiguous countries. This questioning is duplicative and unnecessary for other children who will undergo a much more thorough and child-welfare based forensic screening when in the custody of ORR. By focusing on improving the screening of children from contiguous countries, CBP would also better manage resources.

By employing a child welfare professional at CBP facilities that regularly encounter unaccompanied children, DHS would improve the integrity of its TVPRA screening process and increase the safety of all immigrant children in its care. The position would allow CBP personnel to maintain their focus on enforcement activities instead of acting as child case workers. Having specialized staff in these positions would also increase communications and collaboration between agencies including other components of DHS and ORR within HHS.

³ See also Emily Creighton, *Inspector General Falls Short in Documenting Border Detention Conditions*, AM. IMMIGR. COUNCIL BLOG (Sept. 16, 2014) available at <http://bit.ly/1r3VS0e>.

⁴ See e.g., U.S. Reps. Zoe Lofgren, Sheila Jackson Lee and Joe Garcia, <http://tinyurl.com/o5vew3p>

⁵ P.L. 110-457, Title II, Subtitle D § 235, 122 Stat. 5074, codified at 8 USC § 1232. As this mandate rests with DHS, they have some flexibility in assigning this responsibility to other DHS entities such as USCIS, etc.

⁶ See, e.g., Betsy Cavendish and Maru Cortazar, *Children at the Border* (Appleseed Network, 2011) (reporting on a 2 year investigation documenting failed TVPRA screening by CBP and the need for child appropriate interviewing by qualified professionals); UNHCR, Findings and Recommendations Relating to the 2012-2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border (June 2014); Marc Rosenblum, Statement: *Measuring Border Security: Hearing on the U.S. Border Patrol's New Strategic Plan and the Path Forward Before the House Subcommittee on Border and Maritime Security*, 112th Congress (2012); U.S. Government Accountability Office, *Border Patrol Strategy: Progress and Challenges in Implementation and Assessment Efforts*, No. 12-888T (May 8, 2012).

Child welfare professionals should also oversee the care of accompanied children and ensure best interest considerations are incorporated into custody decisions for families and removal actions that may incorporate a migration deterrence program. Child welfare professionals can also screen accompanied children and refer children for credible fear interviews when appropriate.

Position Description

DHS should utilize child welfare professionals to provide the screenings required by the TVPRA and humanitarian assistance to unaccompanied alien children and accompanied children held in CBP ports of entry and stations. Ideally such a program should be an independent contract with a social service organization. Child welfare professionals should be licensed social workers with expertise in child welfare, trafficking, and asylum protections. DHS should contract with independent care providers or, if necessary, directly hire such personnel. These child welfare professionals should be hired on a full or part-time basis (but not rotating) and provide services in person. DHS would place these child welfare professionals at no fewer than seven of the CBP offices or stations with the largest number of unaccompanied alien child apprehensions in the previous fiscal year.

Experience Necessary

While we recognize the efforts of CBP to train certain agents in the processing of children, we believe that these resources would be better invested in child welfare professionals who have substantive expertise in child welfare. This position would require licensed child welfare professionals, such as state licensed social workers, who have past experience and expertise in culturally competent, trauma-centered, and developmentally appropriate interviewing skills.

Benefits of a Child Welfare Professional

1. As part of Section 235(a) of the Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232(a)), CBP is required to screen arriving unaccompanied children from contiguous countries to determine whether they are victims of trafficking and/or fear return and/or lack decision-making capacity, but numerous NGOs, the GAO and Congress have documented CBP's failure to do so. Having a child welfare professional provide trafficking, asylum, and capacity assessments will ensure the integrity of the screening process and safety of these children.
2. Such an allocation of responsibilities will also save CBP money by not resourcing law enforcement agents to perform child welfare roles and permit law enforcement agents to focus on enforcement and border security.
3. Children have unique vulnerabilities. Unaccompanied immigrant children apprehended by CBP are held in CBP holding cells under the same or nearly the same conditions as adults. No employee is specially hired to oversee or meet the needs of these children, and upon release from CBP detention, children frequently report having experienced a lack of adequate food, clothing, blankets and medical and legal assistance while in CBP custody. [As per reports listed above].

4. Increased screening, identification, and interdiction of child trafficking victims or children at risk of being trafficked improves the likelihood of assessing protection needs and prosecuting human traffickers.
5. Identification and screening of family units will facilitate the distinction between DHS and HHS responsibilities in detention and reunification of families.
6. Child welfare professionals will be able to make initial placement recommendations and help prioritize placement of vulnerable children especially during influxes. (Such as identifying vulnerable toddlers for immediate foster care placement or making a recommendation for children with diminished decision-making capacity, etc. to ORR streamlining the placement process).
7. With child welfare professionals engaged in the screening process, children will better understand their due process rights while in CBP custody, and children will be more adequately cared for and protected.

CC:

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Respectfully for consideration,

Alliance for Global Justice

American Civil Liberties Union (ACLU)

American Immigration Lawyers Association (AILA)

Americans for Immigrant Justice (AI Justice)

Bethany Christian Services (BCS)

Border Action Network

Center for Gender & Refugee Studies

Center for the Human Rights of Children, Loyola University Chicago
Christian Church (Disciples of Christ) Refugee and Immigration Ministries
Coalicion de Derechos Humanos
Esperanza Immigrant Rights Project
First Focus
Florence Immigrant and Refugee Rights Project
Global Campaign to End Child Detention
Humane Borders
Human Rights Watch
Immigration Counseling Service (ICS)
International Detention Coalition (IDC)
Kids In Need of Defense (KIND)
Kino Border Initiative
Latin America Working Group
Leadership Conference of Women Religious (LCWR)
Legal Services for Children
Lutheran Children and Family Service of Eastern PA
Lutheran Immigration and Refugee Service (LIRS)
Michigan United
Migration and Refugee Services/U.S. Conference of Catholic Bishops
Missionary Servants of the Most Holy Trinity
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Social Workers (NASW)
National Council of Jewish Women (NCJW)
National Immigration Law Center
NETWORK, A National Catholic Social Justice Lobby
OneAmerica
Pax Christi USA (PCUSA)
Proyecto Azteca
Proyecto Juan Diego

Proyecto VOS-Voices of Survivors

Public Counsel

Sin Fronteras

Sojourners

Southern Border Communities Coalition

U.S. Committee for Refugees and Immigrants (USCRI)

UNIDOS Against Domestic Violence

Washington Office on Latin America

Women's Refugee Commission

Young Center for Immigrant Children's Rights

Addendum—Detailed explanation of the Child Welfare Professional Role

Detailed Description of Duties/Responsibilities:

- a) **Ensure child welfare, best interest treatment, and *Flores* compliance while in CBP custody:**
- Ensure each unaccompanied child is provided with humanitarian assistance; assistance includes emergency medical and mental healthcare as necessary that complies with state and federal mandated reporting laws.
 - Ensure that allegations of abuse or mistreatment are referred to the appropriate state and federal child protection authorities and that CBP satisfies its obligations under applicable child abuse reporting laws.⁷
 - Ensure each unaccompanied child is provided with climate appropriate clothing, shoes, basic personal hygiene and sanitary products/conditions.
 - Ensure each unaccompanied child is provided with adequate nutrition, and a safe and sanitary living environment.
- b) **Ensure appropriate and exhaustive screening process for unaccompanied children and accompanied children:**
- Develop guidelines for treatment of all children in custody of CBP (consistent with the *Flores* settlement, including policies and procedures for reliable age determinations of children.)
 - Conduct child-appropriate screening of accompanied children to identify victims of persecution or trafficking or children at risk of persecution or trafficking or who lack capacity.
 - Conduct screening of all UACs in accordance with Trafficking Victims Protection Reauthorization Act, section 235(a) and refrain from screening children from non-contiguous countries who will undergo screening at ORR.
 - Ensure children, whether accompanied or unaccompanied, are not held for longer than lawfully permitted in CBP facilities.
 - Interview non-parental relatives traveling with unaccompanied children to determine trafficking and/or family reunification and sponsorship situations. Coordinate with ICE to facilitate the consideration of non-parental sponsors for family reunification purposes by making a release recommendation to ICE/ERO in accordance to the parental interest directive regarding primary caregivers so that this family member can be referred for alternatives to detention. This does not impact the laws in place with respect to placing unaccompanied children in ORR custody. Potential community sponsors for the unaccompanied children should also be ascertained voluntarily from the non-parental family members and provided to ORR.
 - Ensure ORR is notified when children meet the notification and transfer requirements set forth in Section 235(a) and (b) of the TVPRA
 - Provide a best interest placement recommendation for accompanied children and families to ICE that takes into consideration the best interests of the child and the *Flores* Settlement Agreement, favoring a policy of release. Coordinate with ICE regarding recommendations for the least restrictive form of detention.
 - Coordinate with the Mexican Consulate to ensure the safe repatriation of unaccompanied Mexican children who are not referred to ORR for placement in accordance with Section 235(a) and (b) of the TVPRA.

⁷ See e.g., Victims of Child Abuse Act of 1990; 42 U.S.C. § 13031; 8 C.F.R. § 81.2–81.3

c) Ensure all children receive oral and written notice of rights under *Flores*, PREA and the Immigration and Nationality Act:

These rights include the right to seek relief from removal and the right to confer with counsel, family, child advocate, or friends while in temporary custody of CBP, as provided by 8 C.F.R. 236.3 and the *Perez-Funez* and *Orantes* injunctions and facilitate such contact when necessary

- Ensure that children can avail themselves of relevant complaint mechanisms to report abuse or misconduct.
- Report abuse or mistreatment to state and/or federal child protection authorities as required, as well as DHS Office of the Inspector General, Office of Civil Rights and Civil Liberties, CBP Internal Affairs Office, and the Office of Refugee Resettlement.
- Provide notice to the area ORR Know Your Rights (KYR) provider regarding a child who has made an allegation of abuse and direct provider to relevant authorities regarding availability of immigration and/or administrative relief for individuals with pending civil rights complaints.
- Ensure that all children are shown the video orientation and provided with written notice of rights available in English and 5 most common native languages spoken by UACs held in custody at that location during preceding fiscal year
- Ensure that oral notice of rights are provided in native languages

d) Procedures for migration deterrence programs for family units at the border--In any migration deterrence program carried out at a border, the child welfare professional shall:

- Inquire whether a child is traveling with—a parent or legal guardian;
- Ascertain whether the removal location of an apprehended parent or legal guardian of the child presents any humanitarian concern or concern related to such apprehended individual's physical safety;
- Ensure that, with respect to a decision related to the removal or referral for prosecution of such apprehended individual, due consideration is given to—
 - (i) the best interests of such apprehended individual's child, if any;
 - (ii) family unity whenever possible; and
 - (iii) other public interest factors, including humanitarian concerns and concerns related to such apprehended individual's physical safety.
- Develop procedures for such screening and recommendations for due consideration of the best interests of the child in accordance to the aforementioned criteria.