



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

OHCHR REGISTRY

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Recipients : SPD

Mr. Francois Crepeau
Special Rapporteur of the human rights of migrants

Ms. Maud De Boer-Buquicchio
Special Rapporteur on the sale of children, child prostitution, and child pornography

Ms. Joy Ezeilo
Special Rapporteur on trafficking in persons, especially women and children

Ms. Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Dear Special Rapporteurs Crepeau, De Boer-Buquicchio, Ezeilo, and Manjoo;

Thank you for your letter dated July 7, 2014. The United States supports the mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the sale of children, child prostitution and child pornography; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes and consequences. In your letter, you expressed concern about information you had received regarding unaccompanied children in the United States and sought additional information from the United States government. We appreciate the opportunity to respond to the eight questions you posed in your letter.

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

The U.S. Government is focused on maximizing every available resource to process safely unaccompanied migrant children apprehended by U.S. Customs and Border Protection (CBP) officers, in accordance with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), the Immigration and Nationality Act, the Homeland Security Act of 2002, and other applicable laws. The Department of Homeland Security (DHS) conducts a basic health screening during the unaccompanied children's processing, and provides initial shelter, emergency medical care, access to telephones and other basic necessities for these children until they are

transferred to the care and custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR).

The role of CBP, a component of the U.S. Department of Homeland Security (DHS), at the border is as follows: (1) CBP officers and Border Patrol agents encounter and identify the individual as an unaccompanied child; (2) CBP officers and Border Patrol agents process the administrative case for the unaccompanied child; and (3) at the completion of processing, CBP either transfers the child to ORR's care and custody or, if permitted under the limited circumstances provided by law, arranges for the child's voluntary return.

For an unaccompanied child to be permitted to withdraw his or her application for admission and return voluntarily, the child must be a national or habitual resident of a contiguous country (i.e., Canada or Mexico), and CBP must determine that the child: (1) does not have a fear of return to his or her country of nationality or country of last habitual residence owing to a credible fear of persecution; (2) is not a victim of a severe form of trafficking or at risk of being trafficked upon return to his or her country of nationality of last habitual residence; and (3) is able to make an independent decision to withdraw his or her application for admission.

As required by law, DHS screens all unaccompanied children who are nationals or habitual residents of a contiguous country (Mexico or Canada) upon apprehension to determine if they meet these criteria. DHS also screens unaccompanied children from noncontiguous countries for persecution or trafficking concerns as a matter of policy. Mexican unaccompanied children are returned to Mexico in coordination with Mexican authorities and in accordance with repatriation agreements between the United States and Mexico, as required by the TVPRA. These repatriation agreements include specific arrangements regarding the time, location and notification instructions for the repatriation for members of vulnerable populations.

Unaccompanied children from contiguous countries who do not withdraw their application for admission, as well as unaccompanied children from noncontiguous countries, are transferred to the care and custody of ORR and generally are referred for removal proceedings before an immigration judge. After transfer, ORR places unaccompanied children in the least restrictive setting that is in the best interest of the child, as required by law. HHS gives each child a complete medical exam within 48 hours and provides them with medical care, dental care, opportunities for extracurricular activities, and access to educational programs. Children are also screened separately to determine if they are victims of abuse, crime, or human trafficking, or if there are any immediate mental health needs that require special services. ORR then seeks to release the child to U.S. sponsors, including family members.

Once placed in removal proceedings, children may apply for asylum or seek other forms of relief from removal. Asylum applications filed by unaccompanied children are considered in the first instance by U.S. Citizenship and Immigration Services (USCIS) asylum officers

The United States fully honors its obligations, as a party to the 1967 Protocol to the 1951 Refugee Convention, and is committed to the protection of those whom U.S. authorities have determined to have a well-founded fear of persecution, or have suffered past persecution, in their home country based on race, religion, nationality, membership in a particular social group, or political opinion and who do not fall within one or more of the exclusion or cessation grounds under the convention.

Following the large influx of unaccompanied children into the United States earlier this year, several U.S. government agencies worked together to improve conditions for children awaiting transfer to HHS custody, following their initial apprehension, by opening alternate facilities with appropriate food service, recreation, and other services.

2. Please provide information about the measures being implemented by your Excellency's Government to protect the rights of these unaccompanied migrant children.

As noted above, upon apprehension, DHS screens all unaccompanied children for protection concerns, including to identify victims of human trafficking as required by TVPRA 2008 and to determine whether the child has a fear of persecution upon return to his or her home country. Furthermore, all USCIS asylum officers receive specialized training on child-appropriate interview techniques and guidelines for assessing children's asylum claims. Subsequent to apprehension, DHS serves all minors with a Form I-770, Notice of Rights and Request for Disposition for Minors, and explains their rights as minors, including the right to use the telephone, be represented by a lawyer, and have a hearing before an immigration judge. Under U.S. law, barring exceptional circumstances, federal agencies must transfer an unaccompanied child to ORR care and custody within 72 hours of determining that the child is unaccompanied.

Unaccompanied children in HHS custody are given information on their legal rights and are provided legal screenings and legal representation in certain cases. They also are provided access to legal counsel to the greatest extent practicable. Custodians of unaccompanied children receive legal orientation trainings provided through the Department of Justice's Legal Orientation Program (LOP) and administered by the Executive Office for Immigration Review (EOIR). Providers of a legal orientation program for custodians of unaccompanied children (LOPC) offer general group orientations, individual orientations, self-help workshops, and assistance with pro bono referrals. Additionally, LOPC providers are able to assist with school enrollment and make referrals to providers of social services to help ensure the well-being of the child. EOIR issues guidance to LOPC providers designed to assist them in identifying victims of mistreatment, exploitation, and trafficking; protecting the victims from further harm; and connecting the victims to needed social services.

DOJ and the Corporation for National and Community Service (CNCS), which administers AmeriCorps national service programs, have awarded \$1.8 million in grants to increase the effective and efficient adjudication of immigration proceedings involving

certain children who have crossed the U.S. border without a parent or legal guardian and whose parent or legal guardian is not in the United States or is in the United States but unavailable to provide care and physical custody. The grants will be disbursed through “justice AmeriCorps” and will enable legal aid organizations to enroll approximately 100 lawyers and paralegals to represent children in immigration proceedings. The “justice AmeriCorps” members will also help to identify children who have been victims of human trafficking or abuse and, as appropriate, refer them to support services and authorities responsible for investigating and prosecuting the perpetrators of such crimes. In addition, DOJ will be providing limited funding through EOIR for other direct representation initiatives for children.

3. As the issue of unaccompanied migrant children affects countries of origin, transit and destination, please provide information with regard to any regional protection measures in place that provide protection to migrant children.

The United States is committed to working closely with the governments of El Salvador, Guatemala, Honduras, and Mexico to find a solution to this humanitarian crisis and to address the underlying factors that affect migration from Central America.

For instance, the Department of State (DOS) and DHS recently attended the 19th Regional Conference on Migration (RCM), which took place in Managua, Nicaragua in June 2014, and included representatives from the countries of Central America, Mexico, Canada, and the Dominican Republic. The RCM is an informal, state-led, consensus-based body that allows for non-political discussions of regional migration themes. Vice-ministers and heads of delegation jointly issued the “Managua Extraordinary Declaration” on unaccompanied children that, *inter alia*, endorses the creation of an *ad hoc* working group on migrant children, calls for countries to counter misinformation propagated by smugglers about immigration benefits, calls on member countries to take actions to discourage irregular migration and combat smuggling and human trafficking, and calls for cooperation with civil society and international organizations in providing protection to children.

CBP has initiated and run public campaigns in Central America to help convey that there is no pathway to U.S. citizenship. CBP has also run campaigns in the U.S. aimed at having individuals in the U.S. discourage their family members in Central America from making the journey to the United States.

In addition, DOS has partnered with the International Organization for Migration (IOM) to implement programs that build the capacity of Central American governments to identify, screen, protect, and refer unaccompanied child migrants to appropriate services. And through its partnership with IOM, United States Agency for International Development (USAID) is working with government officials, civil society organizations, and other partners in Honduras, Guatemala, and El Salvador, to provide immediate care, child protection services, and onward assistance for returning families and unaccompanied children.

4. **Please explain all measures that have been taken, or are intended to be taken, by US Customs and Border Protection (CBP) and US Border Patrol to ensure adequate protection safeguards for unaccompanied children upon arriving at the US South Texas border and during their transfer and detention, including their right to seek asylum.**

Note: The Office of the Border Patrol is a component of CBP.

DHS is required by the TVPRA 2008 to screen all unaccompanied children who are nationals or habitual residents of a contiguous country to determine if they have been victims of human trafficking, are at risk of being trafficked upon return, or have a fear of persecution if they return to their home country. DHS also screens unaccompanied children from noncontiguous countries for persecution or trafficking concerns as a matter of policy. Unaccompanied children from contiguous countries who present these factors or who do not voluntarily withdraw their applications for admission or lack the capacity to do so, as well as unaccompanied children from noncontiguous countries, are transferred to ORR's care and custody. In accordance with law, they generally are placed in removal proceedings before an immigration judge. In removal proceedings, the children are provided full opportunity to apply for asylum or seek other protections available under U.S. laws that would permit them to remain in the United States. Through internal policies and procedures and related training for its employees, DHS ensures adequate protection safeguards for unaccompanied children from the time they are encountered by CBP officers and Border Patrol agents until they are transferred to HHS custody.

5. **As no child should be detained and because there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum, what alternatives rather than alternative forms of detention or alternatives to release – has your Excellency's Government considered for migrant unaccompanied children irregularly entering the country, bearing in mind that alternatives have been found to be significantly more cost-effective than traditional detention regimes.**

Under U.S. law, DHS and other federal agencies must transfer an unaccompanied child to HHS custody within 72 hours of determining that child is unaccompanied, unless exceptional circumstances apply. HHS is required by law to promptly place these children in the least restrictive setting that is in the best interest of the child. Ninety-five percent of children who enter HHS custody are placed with a parent, relative, or non-relative sponsor within approximately 35 days, and HHS is working to reduce that time. Placement of children who are identified as victims of trafficking may include placement in the Unaccompanied Refugee Minor program if a suitable family member is not available to provide care.

6. **Please inform us as to whether individual assessments are carried out in each case, and whether the child or a representative is allowed to submit the reasons why he or she should not be deported, and to have the case reviewed by the competent authorities.**

The U.S. government makes individualized determinations as to whether each unaccompanied child is eligible for protection. Upon apprehension, DHS screens all unaccompanied children to determine protection concerns, including to identify victims of human trafficking as required by the Trafficking Victims Protection Reauthorization Act of 2008 and to determine whether the child has fear of persecution upon return to the home country.

Unaccompanied migrant children from noncontiguous countries, as well as children from contiguous countries who do not withdraw their application for admission, are placed in removal proceedings where their cases are individually reviewed by an immigration judge. These proceedings provide unaccompanied children the opportunity to assert a claim of asylum or seek other protections available. The children have the right to be represented by legal counsel in the proceedings, and there are various programs available to assist them with access to legal counsel to the greatest extent practicable.

- 7. Please inform us as to whether each child is quickly provided with a legal guardian who is competent and able to represent them in any ensuing legal proceedings, as well as a competent lawyer able to defend their rights in such proceedings.**

HHS usually places unaccompanied children in short term shelters with child welfare specialists. During this time, HHS facilitates the child's safe and timely release to live with a parent or family member in the United States. During that time the children will be subject to removal proceedings and required to appear before an immigration judge. HHS has streamlined and accelerated this process by reducing the average length of stay for released unaccompanied children from 54 days in 2012 to 35 days in 2014. These children are provided with legal services, which includes information about their legal rights, screenings for legal relief eligibility, direct representation for certain cases, and access to legal counsel to the greatest extent practicable. HHS also ensures that all sponsors know that they have a responsibility to bring children to immigration court proceedings.

Furthermore, HHS is authorized to appoint independent child advocates for trafficking victims and other vulnerable unaccompanied children to promote the best interests of the child. The U.S. government is taking steps to facilitate legal representation for this vulnerable population. For example, as mentioned above, DOJ and the Corporation for National and Community Service (CNCS) have awarded \$1.8 million in grants to enroll approximately 100 lawyers and paralegals to represent children in immigration proceedings. The "justice AmeriCorps" members will also help to identify children who have been victims of human trafficking or abuse and, as appropriate, refer them to support services and authorities responsible for investigating and prosecuting the perpetrators of such crimes. The Administration has also taken steps to encourage the private Bar to assist by providing pro bono representation to unaccompanied children.

8. Please provide us the details, and where available the results, of the procedures put in place for the rapid identification, provision of assistance and protection of potential child victims of trafficking and exploitation among these unaccompanied migrant children. If no such measures have been taken, please explain why?

As discussed above, although relevant laws and regulations do not require immediate screening of unaccompanied children from noncontiguous countries, DHS, as a matter of policy, screens all unaccompanied children at a land border or port of entry to determine if they have been victims of human trafficking, are at risk of being trafficked upon return, or have a fear of persecution if they return to their home country. Unaccompanied children may also apply to DHS and DOJ for immigration relief that would permit them to remain in the United States, including asylum for those who have a well-founded fear of persecution in their country of nationality.

All unaccompanied children in HHS custody are screened by trained child welfare specialists for trafficking concerns. Any suspected child trafficking victim is referred to HHS's Anti-Trafficking in Persons office. If there is credible information that indicates the child may be a victim of trafficking, the child may be granted an eligibility letter and provided federally funded benefits and services. As part of its sponsor assessment process, HHS will conduct a home study on any potential sponsor of a victim of trafficking to ensure that the child is released in a safe and supportive environment.

Sincerely,



Pamela K. Hamamoto
Ambassador