



**Americans for
Immigrant Justice**

Formerly Florida Immigrant Advocacy Center (FIAC)

2014

CHILDREN FLEEING CENTRAL AMERICA: STORIES FROM THE FRONT LINES IN FLORIDA

AUGUST 2014

Prepared by: Cheryl Little, Esq., AI Justice Executive Director

***This report is dedicated to the brave, resourceful and always
inspiring children we have the privilege of serving
and who teach us so much each and every day.****

The report was made possible due to the indispensable contributions of:

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**Some of the children's drawings are included in the report.*

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BIA	Board of Immigration Appeals, the highest administrative immigration court
CBP	U.S. Customs and Border Protection, a DHS agency
DCF	Florida Department of Children and Families
DHS	U.S. Department of Homeland Security
DUCS	Division of Unaccompanied Children's Services, part of ORR
FIAC	Florida Immigrant Advocacy Center
FIU	Florida International University
HHS	U.S. Department of Health and Human Services
HRIFA	Haitian Refugee Immigration Fairness Act
ICE	U.S. Immigration and Customs Enforcement, a DHS agency
INS	U.S. Immigration and Naturalization Service; INS dissolved when immigration services and enforcement became three separate DHS agencies on March 1, 2003: ICE, USCIS, and CBP
KIND	Kids in Need of Defense
MS-13	Mara Salvatrucha, a violent gang
ORR	Office of Refugee Resettlement, part of HHS
SIJ	Special Immigrant Juvenile
TPS	Temporary Protected Status
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UCBPB	Unaccompanied Children Pro Bono Pilot Project
UNHCR	United Nations Commission on Refugees
USCIS	U.S. Citizenship and Immigration Services, a DHS agency

OUR WORK AT AMERICANS FOR IMMIGRANT JUSTICE

Americans for Immigrant Justice (AI Justice) is an award-winning, nationally recognized pro bono law firm that protects and promotes the basic rights of America's immigrants. In Florida and on a national level, it champions the rights of unaccompanied immigrant children; advocates for survivors of trafficking and domestic violence; serves as a watchdog on immigration detention practices and policies; and speaks for immigrant groups who have particular and compelling claims to justice.

Many of our clients have fallen victim to human rights violations such as slavery, abuses while detained, and lack of due process

in a barely functional immigration court system that does not ensure legal representation for those who face deportation. Our lawyers have closed more than 85,000 cases of vulnerable immigrants from Central and South America, Africa, Europe and Asia since opening our doors in January 1996.

AI Justice is the rare organization that works both nationwide and on the frontline of human rights in Florida. Grounded in real-world, real-people experience, AI Justice's free direct work with immigrant clients informs its broader policy work. Its multicultural and multilingual staff works to build alliances between immigrants and non-immigrant

groups, including government, civil, social and faith-based communities. AI Justice is a non-partisan organization, with high-profile members of both parties on its Board and Advisory Board. Demand for AI Justice's services has skyrocketed, making our mission more relevant than ever.

Florida is a bellwether state and national testing ground for immigration policies. The nation's fourth largest state, Florida mirrors U.S. demographics except for higher proportions of immigrants and elderly residents who reflect what the country will become in the following decades. AI Justice is strategically positioned to spot injustices and sound the alarm.

FROM FIAC TO AI JUSTICE

In 2011, seeing hardening attitudes toward immigrants nationwide, AI Justice decided to step up its advocacy for sensible immigration policies and reform. This renewed determination prompted a national agenda and a name change to Americans for Immigrant Justice (AI Justice) from Florida Immigrant Advocacy Center (FIAC). While continuing to defend human rights by representing vulnerable immigrants, AI Justice provides "boots on the ground" experience that informs smart and workable national immigration policy.

Our Washington, D.C. office extends AI Justice's policy influence. Four former AI Justice staffers now

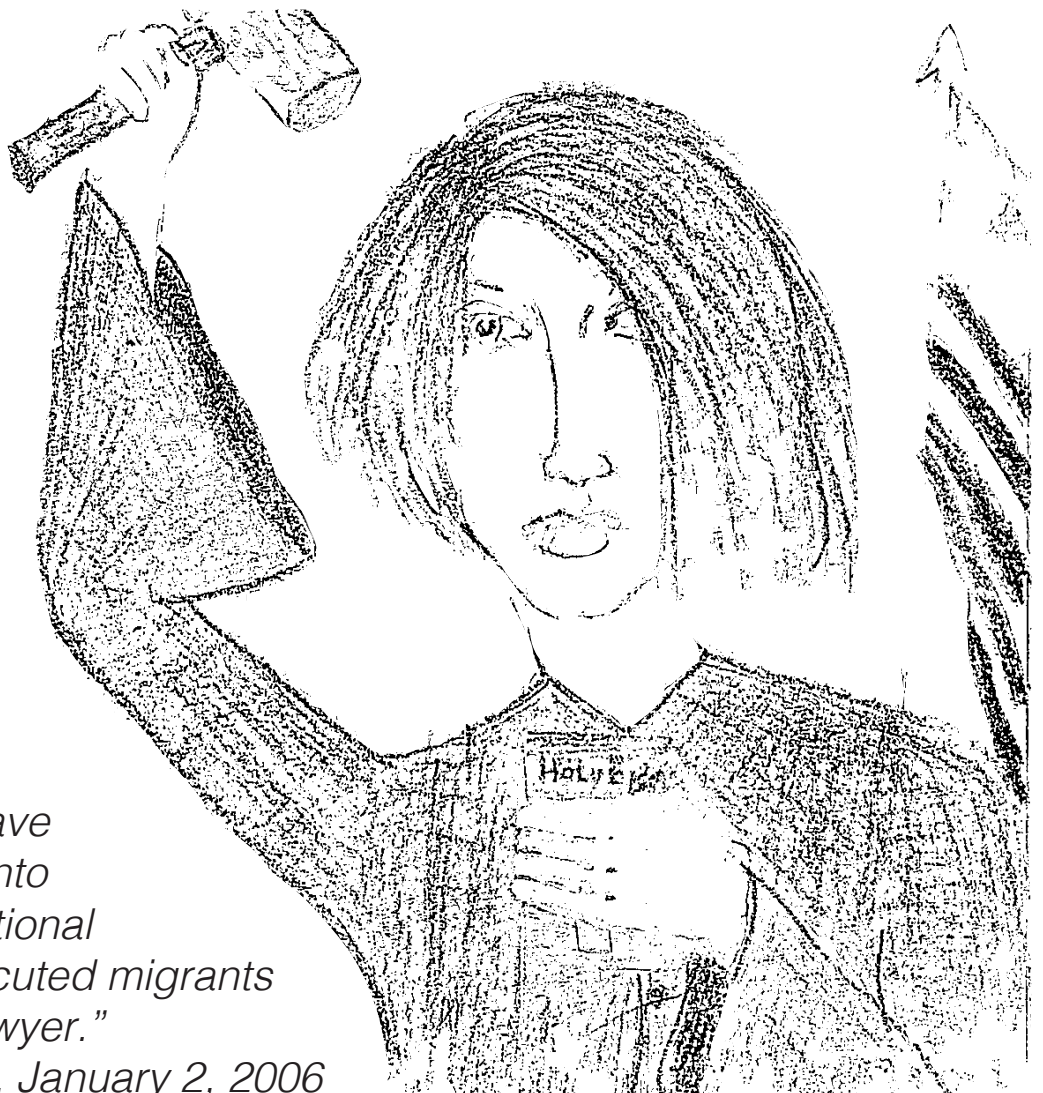
work on The Hill. At least 10 former staff members have become asylum officers with the U.S. Citizenship and Immigration Services (USCIS).

AI Justice testifies before Congress, challenges government abuses in federal court, informs the public on critical immigration policy and writes groundbreaking reports that give immigrants a voice.

Among our reports are:

- *Broward Transitional Center: A 'Model' for Civil Detention*¹
- *"I running out of hopely..." Profiles of Children in INS Detention in Florida*²
- *After the Earthquake – Haitian Children Seeking Safety in the United States*³

- *Unleash the DREAM: End the Colossal Waste of Young Immigrant Talent*⁴
- *Dying for Decent Care: Bad Medicine in Immigration Custody*⁵
- *Securing our Borders: Post 9/11 Scapegoating of Immigrants*⁶
- *Haitian Refugees: A People in Search of Hope*⁷
- *INS Detainees in Florida: A Double Standard of Treatment*⁸
- *Cries for Help: Medical Care at Krome Service Processing Center and in Florida's County Jails*⁹
- *Florida County Jails: INS's Secret Detention World*¹⁰



*"Such successes have turned [AI Justice] into a powerhouse in national advocacy for persecuted migrants too poor to hire a lawyer."
-- The Miami Herald, January 2, 2006*

AI JUSTICE CHILDREN'S LEGAL PROGRAM

The Children's Legal Program was launched in 1999 following the case of "Baby Margaret," an 18-month-old who was abandoned after she was smuggled into the United States. When the immigration judge asked whether the deportation officer would represent the infant, an AI Justice attorney who was in the courtroom immediately offered to take the case.

Our Children's Legal Program has served thousands of unaccompanied children since 1999, whether they are in foster care, in local shelters overseen by the Office of Refugee Resettlement (ORR), or in the community living with a parent or guardian.

MIAMI-DADE COUNTY ICLASP PROGRAM: "A MODEL"

AI Justice's Children's Legal Program has evolved over the years. As we realized that children facing deportation needed more than legal counsel, AI Justice developed a partnership to provide them complementary services. In 2006, a \$1 million grant from The Children's Trust¹¹ allowed AI Justice and its nonprofit partners to launch a program that coordinates care and better serves unaccompanied children in Miami-Dade County.¹²

Today, we are the lead agency in a partnership that provides

comprehensive and complementary services to unaccompanied children in immigration custody. Named the Immigrant Children's Legal and Service Partnership (ICLASP), the program offers free group therapy, trauma-resolution therapy, youth development activities and life-skills workshops in addition to comprehensive legal services.

The Division of Unaccompanied Children's Services (DUCS), the federal agency entrusted with the care and custody of unaccompanied minors, has noted the partnership's quality work and care coordination. Maureen Dunn, former DUCS director, deemed the partnership "a model program for other care providers throughout the country."¹³

Among the benefits of working with partners are the relationships and trust built over time as providers work together toward a common goal. For instance, AI Justice and other providers have built good working relationships with the DHS-contracted shelters that care for unaccompanied children and have built equally good relationships with the state juvenile court as well as the immigration court that handles children's cases. This promotes more efficient delivery of services and better outcomes in the children's best interests.

AI Justice provides training and technical assistance to legal-service agencies and pro bono

attorneys statewide. We have trained juvenile and family court judges in Florida and across the country to more efficiently and effectively meet the unique needs of vulnerable children.

AI Justice has influenced national policies and laws affecting immigrant children and is widely recognized as an expert in immigrant children's issues. Staff members helped shape new laws for expanding legal protections of unaccompanied immigrant children, which were incorporated into the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). We also advocate for improvements in the care of all unaccompanied immigrant children and for improved immigration policies, including through compiling reports¹⁴ such as this one, that call attention to their plight. Most importantly, we continue to advocate nationally for unaccompanied children to have the right to government-provided counsel in immigration proceedings.

Despite all the efforts of well-meaning providers and government staff, too many vulnerable children end up lost in the detention system or out in the community, their trauma lingering, their legal status uncertain. For any number of reasons, the outcomes too often are not in the children's best interests.

“I didn’t come here looking for my mother or father. I came here to save my life. I was looking for a light, a light, and I really am finding it.”

Susana,* age 17, Honduras

INTRODUCTION

For 15 years, AI Justice has heard harrowing stories from helpless children in search of safety and a better life in America. Some escape their homes because their families abused, abandoned or neglected them. Many such children end up on the run alone, seeking protection from abuse and violence in their homelands. Others become victims of trafficking, and are smuggled into the United States for such illicit purposes as prostitution or forced labor.

“Our message is clear to those who try to illegally cross our borders: you will be sent back home.”

Secretary of Homeland Security
Jeh Johnson Before the Senate
Committee on Appropriations
July 10, 2014

Tens of thousands of vulnerable, unaccompanied children from all over the world set off for the United States each year. Children jump on moving trains they call “The Beast” or the “Train of Death,” risking life and limb in hopes of making it to the U.S. border. Many arrive at the border with a “coyote” (smuggler) who is

clearly not their friend or caregiver and who frequently abandons or abuses them during the journey. Upon arriving at the border, these children are often looking for U.S. authorities to rescue them.

Rather than finding the protection they seek, children encounter a system that is complex, bewildering and frightening. They are handcuffed and kept for days in cells so cold they are called hieleras, the Spanish word for icebox. Conditions in the hieleras are harsh.

Imagine a child who does not speak English and has been traumatized by events in his homeland and again during the journey across borders. What chance does he have of proving an asylum or special immigrant juvenile claim without legal counsel? How will he, alone, navigate through immigration and state court proceedings? The failure to provide these children with legal assistance stands in sharp contrast to other legal proceedings in the United States affecting children. It is also out of step with the interpretation of children’s “best interests” in U.S. family law and the law in many other countries.¹⁵

“Frequently we find that both children and adults who appear in Immigration Court do not understand the difference in the roles of the government trial attorneys and judges and even when provided pro bono counsel, assume that everyone associated with the proceeding functions as... law enforcement officials.”

Letter from National Association
of Immigration Judges (NAIJ) to
Speaker John Boehner and Senate Minority
Leader Nancy Pelosi, July 22, 2014

On July 9, 2014, The American Immigration Council, American Civil Liberties Union, Northwest Immigrant Rights Project, Public Counsel, and K&L Gates filed a lawsuit in U.S. District Court in Seattle, Washington, challenging the federal government’s failure to provide lawyers to children facing deportation.¹⁶ On July 31, 2014, in response to the expedited process designed to return children home more quickly, these groups asked the court to immediately block the government from pursuing deportation proceedings against

*Most of the children’s names have been changed to protect their privacy.

certain children until they obtain legal representation.

AI Justice, which has operated a children's legal program since 1999, has been in crisis mode for the past two years, as the number of children arriving alone in South Florida in need of legal help has skyrocketed. In 2013 we provided services to about 1,600 children; by July 2014 we nearly met the 1,600 mark. We are the lead agency in a partnership that provides comprehensive services to unaccompanied children in immigration custody.¹⁷ The Immigrant Children's Legal and Service Partnership (ICLASP) offers free group therapy, trauma-resolution therapy, youth development activities and life-skills workshops in addition to comprehensive legal services.

On any given day, our dedicated legal staff sees upwards of 250 children who wake up in South Florida shelters, facing deportation and with no right to appointed counsel. AI Justice is the only agency authorized by the federal government to provide services to children in these shelters, to inform them of their basic rights and determine whether they have a legitimate claim to residency in the United States.

The recent growth in child arrivals presents a challenge. In Fiscal Year 2014, we are preparing for a scenario in which an estimated 90,000 children could cross our borders. According to the Office of Refugee Resettlement (ORR), 3,809 children were released to sponsors in Florida from January 1, 2014 to July 31, 2014.¹⁸

While laws governing the treatment of immigrant children have changed over the years, one salient factor remains; It is virtually impossible to ensure an unaccompanied child's "best interest" when the child does not have legal guidance and representation. Often hanging in the balance is whether a child will have a shot at the American dream or be sent home to face abuse, violence, persecution or even death. A recent report by the United Nations High Commissioner for Refugees (UNHCR) found that about sixty percent of unaccompanied Central American children they surveyed had potential claims for relief from deportation.¹⁹

Recent interviews by the Refugee and Immigration Center for Education and Legal Services (RAICES) of 925 children detained at the Lackland Air Force Base in Texas suggest that 63 percent had a potential claim to legally remain in the United States.²⁰ The children included victims of sexual assault, human trafficking, domestic abuse, gang intimidation, persecution and torture.²¹

Only around 7 percent of those [children] who were placed in federal custody between 2007 and 2009, and who had received a ruling by mid-2010, were winning their cases. Those with legal representation were nearly nine times more likely to win.

Vera Institute of Justice
March 2012

AI Justice has met with many such children in the past few years who have potential claims for relief and we have already obtained legal status for dozens of these children.

However, immigration courts are seriously understaffed and underfunded. As of July 2014 there were only 228 full-time immigration judges handling a nationwide caseload of more than 375,000. The national average time to decisions was nearly 20 months: 587 days.²² Many more immigration judges are needed immediately, and cases need to be adjudicated in a timely manner.

Complicating matters further, in late July 2014, the Administration directed immigration judges to begin hearing children's cases so quickly that judges themselves have expressed serious concerns. The speed at which the expedited cases are being heard in a "rocket docket" makes providing legal services to unaccompanied children even more challenging, especially for non-profit agencies whose resources are already stretched to their limits. For several years, two immigration judges were assigned to the Miami children's docket, together hearing about 150 children's cases per month.²³ In late July 2014, after the administration decided to fast-track cases of children who arrived after May 1, 2014, three judges began hearing about 150 new cases per day.²⁴ By the end of August, four judges were handling these cases and a fifth will begin doing so in early September. The expedited manner in which many children's cases are now being handled is neither effective nor ethical.

“That the United States is being overrun by children and that their numbers will create some cataclysmic event is not only morally abhorrent, it is factually erroneous. ... Accepting 60,000 children in a population of 317.2 million—less than two hundred-tenths of 1 percent (.02 percent) of our population—would hardly be straining our resources.”

Op-Ed, Ira Kurzban, past-national President and former General Counsel of the American Immigration Lawyers Association, The Miami Herald, July 15, 2014

On July 22, 2014 the National Association of Immigration Judges (NAIJ) sent a letter to Speaker of the US House of Representatives, John Boehner, and Minority Leader Nancy Pelosi, detailing their concerns over the decision to expedite children's cases. They wrote: “[t]he adage ‘haste makes waste’ is apropos to the context of these cases, because speeding up or truncating the process creates an unacceptably high risk of legal errors which directly lead to higher rates of appeal. Rather than making the process move more quickly overall, the opposite occurs as appeals cause a backlog and delay at the higher levels of our court systems, which in turn, drives up the fiscal costs of these proceedings.” NAIJ also noted the importance of pro bono attorneys for children facing deportation.

Statements by members of Congress, the Administration and others that children arriving from Central America should all be quickly sent back flies in the face of current laws that ensure due process protections for these children. They are entitled to their day in court and a fair and full opportunity to explain why they left their respective country and sought protection here.

As the American Bar Association has well noted, an unaccompanied immigrant child “should be treated with dignity, respect, and special concern for his particular vulnerability as a child.”²⁵

Sadly, this is not what happens when they reach the United States.²⁶

“In 1966, we flew 266,000 Cuban men, women and children into the United States from the Port of Camarioca... We should recognize these helpless children for who they are — victims of violence — and grant them Temporary Protective Status.”

Ira Kurzban, Op-ed, The Miami Herald, July 15, 2014

QUESTION & ANSWER WITH MICHELLE ABARCA,

DIRECTING ATTORNEY, AI JUSTICE CHILDREN'S LEGAL PROGRAM

Q) You hear stories from arriving children every day. What kind of stories are you hearing?

A) A number of these children grew up seeing dead bodies everywhere, in their neighborhoods, in the desert. They have had family members and friends killed, seen machetes stuck in their bodies. Many of the children have been ordered to join gangs or pay with their lives. So many of the young girls have been raped and threatened with death if they don't agree to be gang members' "girlfriends." And they are warned that if they do not succumb, their family will be killed. Children are even afraid to go to school because gang members are waiting to recruit them. And we see many children who are victims of domestic violence, exploitation and neglect. Often they arrive at the border with only the clothes on their backs and maybe a crumpled piece of paper with contact information for a friend or relative in the United States. Many write this contact information on the inside of their belt so it does not get lost or ruined during the journey. Many of the children we see are old beyond their years. They have really never had a childhood; they have had to survive on their own from a very early age. For several years now we have hosted a holiday party for the children in the shelters and gotten them all gifts. For many of these children, it is the first gift they have ever received.

Q) How many of the children you have met with in the past few years flee to reunite with family here? How often do they find the family they're looking for?

A) Many children come to the United States looking for a relative who can open their home and their heart to them. Many come seeking a parent who immigrated to the United States years ago to be able to send money home so her children could eat. Children tell us how they long to feel what is like to have a home and a parent, to finally feel protected and safe, and hopefully to get a glimpse of what a real childhood is.

Q) When you first meet with child clients,

does it take a while to gain their trust? What are some of the challenges in learning their stories?

A) When we first meet the children, they are confused and scared. They have been detained at the border and sometimes transferred through various facilities before meeting us. Often the children have a hard time understanding who we are and what our role is in their lives. Even the basic concept of retaining an attorney is something that most children have never experienced and have trouble understanding. Getting to know a child and the totality of her circumstances takes time. Imagine you are a child who has been apprehended in a foreign country and find yourself being questioned by an unrelated adult. Would you know whom to trust and would you disclose your most personal feelings and painful memories? It takes repeated interviews, usually over the course of several visits, for a child to open up and begin to reveal what happened back home. Often, the generalized violence they describe during their initial interview is just the tip of the iceberg, and the individual threats, the abuse at home, the incidents of rape and other abuses come to light later. Only by having the ability to develop a trusting relationship with these children can we really have a comprehensive view of why each one of them has made the difficult decision to go through this perilous journey.

Q) If a child arrived alone but has one parent in the United States who wants to care for him or her, does the child have a potential claim for relief?

A) It depends on the facts of the case. Having a parent in the United States does not automatically make the child ineligible to remain in the United States.

Q) How do you help children who are younger than 10? How do you find out why they fled and whether they have family here?

A) We are shocked to see how young some of these children are and how they have been

QUESTION & ANSWER CONTINUED

able to survive such a grueling journey. Many of the children recount being scared of the snakes and other animals while sleeping in the desert. Others say they prayed to be met by border patrol agents because they were scared of dying of thirst. To think that a young child would endure these dangers and physical demands makes you wonder what could possibly be so terrible back home that they would travel in such a manner. When children are this young, they often have a hard time articulating what was happening at home, and we need to resort to interviews with adult relatives in their home country or in the United States to understand their situation. Having crayons and paper on hand is always helpful in trying to connect with these young children.

Q) You have been working to help unaccompanied minor children at AI Justice for more than 13 years. What are some of the biggest challenges you and your staff are facing now?

A) The biggest obstacle we face is the fact that there are more children arriving and their cases are being expedited by the immigration court, forcing us to quickly adapt and develop new strategies to deliver quality legal services in the most efficient manner. The logistics of coordinating legal services for a population of hundreds of children that changes daily can be a daunting task. Since these children are not appointed counsel organizations like AI Justice have to try to raise additional funds in order to meet the demand for services and to ensure that we continue to zealously represent children who seek our help. It is difficult to see these children's due process rights being threatened by political interests and misinformation.

Q) What is it like having to represent children in court when their cases are fast-tracked?

A) The biggest challenge has been the dramatic change in the way the children are being processed, and the increased need for our presence in court on behalf of hundreds

of children without additional funding and resources. As attorneys, it is our duty to be diligent and thorough, so the challenge is to continue providing quality representation in the midst of an unprecedented demand for expeditiousness. This is a challenge that we have embraced and it has strengthened our determination to ensure that each and every child is treated with the utmost respect for their due process rights. At a local level, this is not only a challenge for AI Justice, but also for the judges, government attorneys and other pro bono attorneys involved in the process. Their efforts in preserving the integrity of the proceedings, despite the demands we face, are admirable.

Q) Are volunteers helpful?

A) Yes. Without a consistent group of volunteers who are trained and willing to help, we could never achieve good results.

Q) Do you and your staff get any sleep?

A) The fact that we have a team that works closely together helps us stay grounded and optimistic. Knowing that we can lean on each other makes a world of difference. It also helps to feel the support of our board and other community partners who help us along the way. Nonetheless, the demands facing us can be daunting. It is hard to go home at night and disconnect, to forget what you have just heard from the children. Sometimes staff members are shaken to their core by the stories they have heard. Vicarious trauma is something that we definitely encounter and try to address with the help of trauma experts and team-building activities.

Q) Are you concerned about *notarios* or unscrupulous lawyers trying to take advantage of the children?

A) This is one of the many negative consequences of denying these children the right to appointed counsel and expediting a proceeding that is difficult to understand and address, even for adults.

“These are just like your and my children, except that they’re scared and they’re dirty and they’re tired and they’re terrified.”

Dallas County Judge Clay Jenkins

WHO ARE THESE CHILDREN, WHY ARE THEY FLEEING

For many of the children who flee their homes, deportation could be a death sentence. Recent analysis by the Department of Homeland Security (DHS) concluded that children from Honduras, Guatemala and El Salvador “probably perceive the risk of traveling alone to the U.S. preferable to remaining at home.”²⁷

Marissa fled El Salvador after years of abuse and neglect at home and after repeated threats by gang members. “Gang members followed me everywhere I went. I even found notes under my door saying that I would be killed. I moved several times to try to keep safe, but the gang members always managed to find us. I still live in constant fear that they will find me here and kill me,” Marissa said. A Florida state Juvenile Court judge has determined that it is not in Marissa’s best interest to return to El Salvador, and AI Justice is working to get her a Special Immigrant Juvenile visa, a form of relief available to young people who have been abused, abandoned or neglected.

Felipe, 16, and also from El Salvador, shares a similar story. “I was volunteering at a community clinic when a gang member showed up and tried to force me to join the

gang. He became real agitated when I said no. He threatened to kill everyone in my family and I know he could. Gangs recruit like a company searching for more employees in order to distribute more product,” he said.

Oscar Turcio Funez knows full well the danger of remaining in Honduras. When he was a boy, his parents invested all their savings in a small internet business. After infamous MS-13 gang members attempted to extort “protection” money from his parents, they sold their business to pay the ransom, but what they paid was never enough. Oscar’s parents moved to another town, but gang members tracked them down and killed his father. Months later they gunned down Oscar’s brother in front of him at their home.

After receiving death threats himself, Oscar fled to the United States with his mother, and AI Justice took his case. He was granted asylum in March 2013 and his permanent residency application is pending.²⁸ He is grateful for his current employment and the opportunity to live freely in America, and remains determined to pursue studies in internet technology so that

he can honor his dad’s memory and fulfill his childhood dream of working with computers.

Honduras has the highest murder rate in the world. Honduran President Juan Hernandez has said that children fleeing are “displaced by war.”²⁹ Guatemala and El Salvador are also among the top five most dangerous countries in the world today. Innocent children in these countries have nowhere to turn for protection because the gangs and drug cartel members carry out violent and murderous acts with impunity.³⁰

In 2012, William Brownfield, U.S. Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, estimated there were 85,000 gang members in the “Northern Triangle”—Honduras, Guatemala and El Salvador.³¹

It is worth noting the role U.S. foreign policy plays in the current exodus of children from Central America. Much of the gang activity in Central America today was fueled by the power vacuum left following civil wars in these countries.

According to the United Nations High Commissioner for Refugees (UNHCR), Honduran, Guatemalan and Salvadoran children and

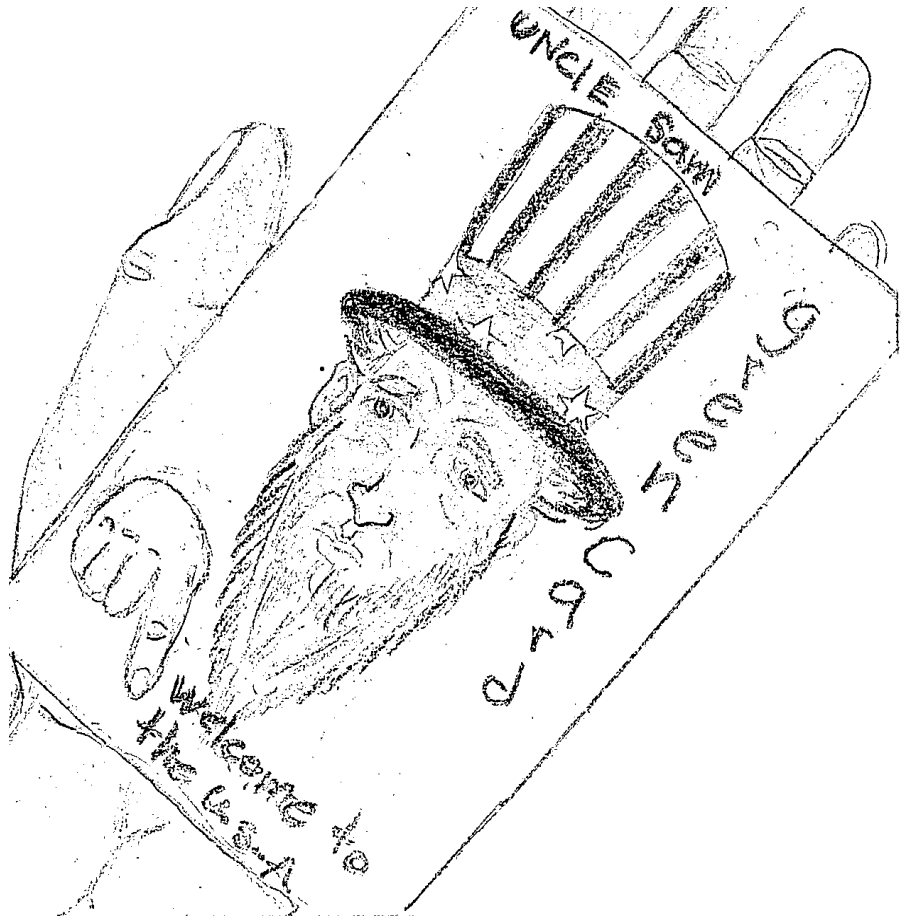
families are also seeking protection in neighboring countries, including Panama, Nicaragua, Costa Rica, Belize and Mexico. In 2013 these five countries registered a 712 percent increase in the number of asylum requests from 2008 levels.³²

There also is an increasing number of displaced persons within the Northern Triangle countries, including 17,000 displaced Hondurans since 2008.³³ Interestingly, the number of children fleeing Nicaragua, which is a desperately poor country but does not have such ruthless gangs, is comparatively very low.

Most of the children AI Justice has served in the past three years are from the Northern Triangle.³⁴ They range in age from toddlers to 17 years of age. While the majority of these children are boys, we are now seeing more girls and younger children. Nationally, the fastest growing group of children arriving alone are under 12 years of age, and about half are girls, many of whom were raped in their home country or during their journey here.³⁵

The number of families arriving at our border has also significantly increased. In FY 2013, DHS apprehended fewer than 10,000 families. In the first nine months of FY 2014, more than 55,000 families were apprehended.³⁶

In Artesia, New Mexico, hundreds of children and their mothers are being held in a converted federal law enforcement center without access to adequate medical attention or mental health services. Hearings are only conducted via video conference and there is scant private visitation space.³⁷ Rather than releasing those who have been determined to have a credible fear of return while their cases are pending, as has been done in the past, DHS has initiated



"Some of the children were sent to reunite with their parents and relatives in the United States, from whom they have been separated for years. But because of our broken immigration system, even though they are in deportation proceedings, the status of the children and their parents remains in limbo. These are the children of our agricultural workers, house cleaners, construction workers and landscapers."

Op-Ed, Al Cardenas, past-Chair, American Conservative Union, "Child migrant crisis requires quick action, long-term solutions," The Hill, July 29, 2014

“How we treat those in need, particularly young people who must appear in immigration proceedings—many of whom are fleeing violence, persecution, abuse or trafficking—goes to the core of who we are as a nation.”

Attorney General Eric H. Holder, Jr. | June 14, 2014

a policy of not allowing release on bond or imposing an impossibly high bond. The government cites a disingenuous post 9/11 ruling by then Attorney General John Ashcroft to deny these families release, claiming that detention in instances of mass migration is critical for purposes of national security.³⁸ In 2003, this same argument was used by Ashcroft to keep Haitian asylum seekers, including children, in prolonged detention.³⁹

Many parents who left their home countries years ago to find work in the United States in order to provide for their children are now attempting to bring their children here, given the increasing violence in Central America and Congress' failure to pass immigration reform. Had the Senate-passed immigration reform bill (Border Security, Economic Opportunity, and Immigration Modernization Act, S.744) been taken up and supported by the House of Representatives, the majority of these parents would be eligible to legalize their status and would eventually be able to petition for their children to come here legally.

The parents of a significant number of children from Honduras and El Salvador have had Temporary Protected Status (TPS) granted and re-issued for several years, but are unable to travel back

home without risking the possibility of not being admitted back into the United States. As of 2012, about 217,000 Salvadorans and 66,000 Hondurans were living here under TPS, granted because of natural disasters that occurred in those countries.⁴⁰ TPS status allows them to work legally but does not lead to U.S. permanent residency and does not allow petitioning for reunification with children or spouses.

In March 2014 the UNHCR released a report entitled, “Children on the Run: Unaccompanied Children leaving Central America and Mexico and the Need for International Protection,”⁴¹ which analyzed the stories of 404 unaccompanied children from Honduras, Guatemala, El Salvador and Mexico, collected during the previous year. They concluded that “58 percent of these children raised possible protection-related reasons for leaving their homes and communities.”⁴²

Twelve-year-old Carlos and his seventeen-year-old-sister, Amy, fled Honduras in early 2014. Their mother died during her own attempt to reach the United States years earlier and the two children were then abandoned by their caretaker. The two became the targets of vicious gangs.

Amy, who is clearly wise beyond her years, explained why they dared

to undertake the dangerous journey that had taken their mother's life:

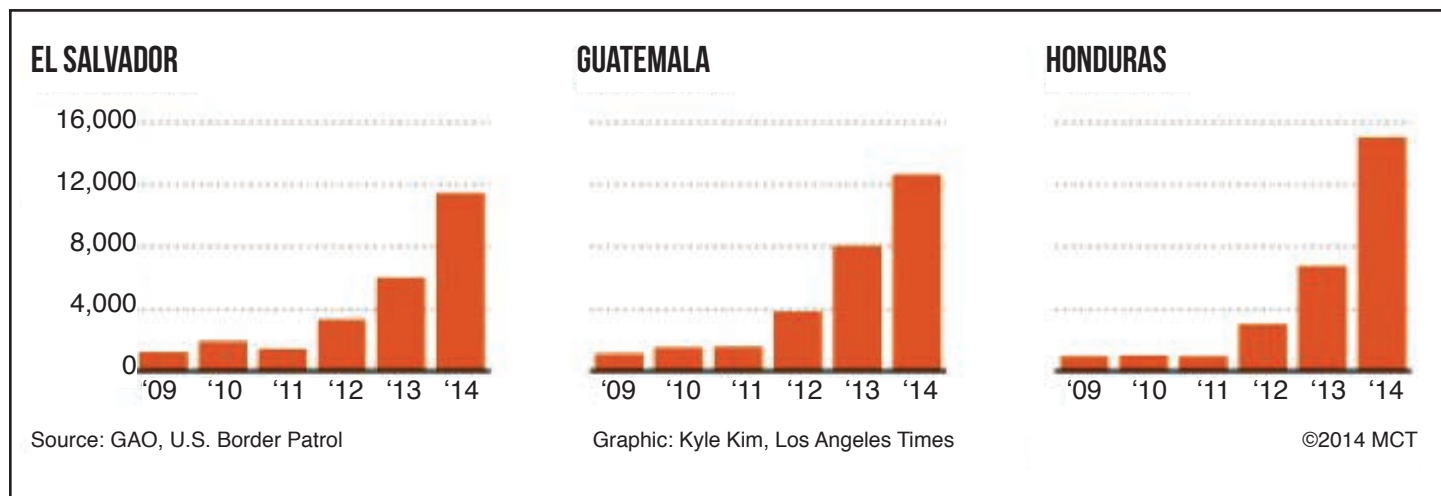
“We left because we had no choice. The drug traffickers would always call me, threaten me and say that when they saw me, they'd have their way with me. And I was even robbed at gunpoint by the traffickers. I knew I had to do as they said or they'd kill me and my little brother. Then one night they shot up the wall of our home when we were sleeping—there were seven shots fired. And we had no one to protect us, we were all alone.”

“Leaving Honduras to try to get to America was really intense, was very risky. We had thoughts of the worst many times during the journey. We thought of all the horrible things that have happened when you leave to try to get to America, including knowing our mother died, but we knew we had to risk it because we had to survive so we prayed the whole time and we went on.”

“It was very emotional when we arrived in the United States and we were especially happy when we saw our grandmother in Miami because she hadn't heard from us for a while and she thought the worst had happened. When we saw her she began to cry, and I cried, and Carlos cried and we all cried for a long time but it was tears of joy and relief.”

WHERE THEY COME FROM IN CENTRAL AMERICA

Total unaccompanied detained children by year* Fiscal year Oct. 1 to Sept. 30



THE NUMBERS

While the number of persons attempting to immigrate to the United States without documentation has stagnated during the past few years, and apprehensions on the Mexican border are far below their peak,⁴³ the number of Central American children making the perilous journey alone has increased dramatically in recent years.

Over 57,000 unaccompanied children were apprehended at the Southwest border between October 1, 2013 and June 30, 2014,⁴⁴ double the number in FY 2013. The number of arriving unaccompanied minors is expected to reach as high as 90,000 in 2014.⁴⁵

The children's tragic stories of suffering and survival permeate your mind and your heart. You begin to think differently; twenty hours of work could save a child. Your time is translated into the only shot at survival a child may have or their last opportunity to pursue their dream of receiving an education. This work trivializes what you used to consider problems. It has indelibly changed who I am and I am a better person for it.

Aidil Oscariz,
AI Justice Staff Attorney

Children fleeing Central America are entitled to a hearing before being deported. The vast majority of children from Mexico and Canada are returned home soon after apprehension without a fair chance to argue a case for asylum or any other legal remedy.⁴⁶

The graph above shows the increasing number of children fleeing alone in recent years.⁴⁷

“I never wanted to come to the United States. I would not have come if I thought I could live in Honduras. But if I would have stayed, I would be dead.”

Eduardo, age 16, Honduras

THE PERILOUS JOURNEY

It can take children several weeks to make it from their home country to the U.S. border. Frequently children encounter significant traumas along the way. A 2009 Catholic Relief Services study of Central American children attempting to reach the United States found that more than 70 percent reported being robbed, extorted, intimidated or abused physically or sexually during their trek.⁴⁸

Marisol fled horrific abuse in Honduras in late 2013. Her experience is typical of the journey many children who travel with smugglers take.

“I spent 17 hours in a van when I left. A 7-month-old baby and her mother and a 15-year-old girl were in the van, too. The windows were all closed. There was no air conditioning and the coyote was smoking all the time. I felt like I couldn’t breathe.”

“When we got to Mexico, we were taken to a bodega to wait to get to the border and I was really scared the whole 11 days we were there. There were a whole bunch of men who made me clean and work for them and they kept yelling at me and pushing me and saying hurtful things to me, like you’re just a f---ing Honduran. There wasn’t

much to eat and I never felt safe because the men were always watching me, and the coyote told me he’d be sleeping with me and he got on the floor next to me and started touching me. I don’t know how I got through the nights but I somehow did.”

Marisol was declared dependent by a Florida State Juvenile Court judge, and Al Justice is helping her petition for Special Immigrant Juvenile (SIJ) status so she can remain legally in the United States and no longer be subject to abuse. Marisol has many aspirations for her life in this country and hopes to pursue a legal career in the future.

Maria fled alone and recalls how difficult her trip was.

“The journey was awful. When I rested, I could no longer get up. I almost died there. I felt I could no longer move my body. That’s when people begin to appreciate their life more, without food, without water, without anything. I fell asleep. That was when I was apprehended. I thought, I risked my life to now be deported. You risk that animals bite you or eat you because there are big animals. It is a desert; there are a lot of thorns. My legs were full of thorns. My whole body had thorns,

large thorns. When I arrived here I weighed 88 pounds, and I used to weigh 103 pounds.”

While in transit, children and their families are subject to being targeted by criminal elements at every turn. A recent New York Times article highlighted concerns raised by the FBI regarding con men posing as U.S. government officials who obtain enough details about some children’s cases that they call the child’s U.S. family to demand money to cover the child’s alleged application fees, travel costs and other expenses.

The article recounted the experience of a Miami housekeeper who said that someone claiming to be a social worker at the Texas shelter where her daughter was detained told her she had to pay \$2,000 to transport her daughter from Texas. After the price was lowered to \$1,500, the concerned Miami mother provided her bank account information, resulting in the withdrawal of funds. She commented that, because the thought of finally seeing her daughter again was so compelling, “the money becomes the least you are worrying about.” The FBI is currently investigating this incident.⁴⁹

TRAUMATIZED BY THEIR HISTORY AND TRAUMATIZED AGAIN BY THEIR TREATMENT ON ARRIVAL

Each child has a unique and often heart-wrenching story, and all share an incredible vulnerability upon arrival in the United States. They are not only traumatized by what they have experienced in their home countries, but also by the difficult circumstances of their flight and separation from their families. Many suffer from anxiety and depression about their uncertain futures. Children who were victims of rape or other horrific crimes continue to struggle with memories of the abuse and their difficult journey here. Post-Traumatic Stress Disorder and other mental health conditions are disturbingly common in this vulnerable population.⁵⁰

The first time I was on a plane is when I was taken from Texas to Miami. I didn't like the experience because I was handcuffed and with chains around my waist and my feet shackled for the whole time after we left the Hielera until we arrived in Miami. I felt so ashamed. When I asked the officer why this had to happen, I was told those were the rules.

Amy, age 17, Honduras

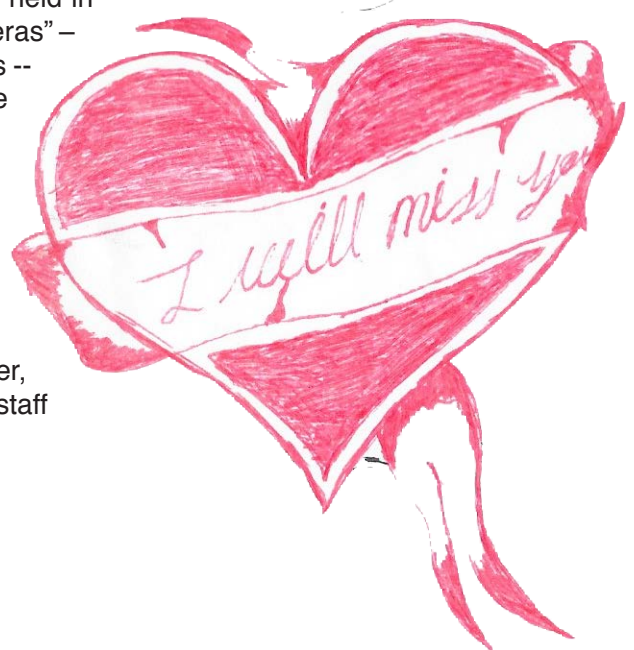
Nationwide, children in immigration detention have minimal access to mental-health professionals who can provide critically needed counseling. Almost none of these children can read, write or speak English, and often have little or no access to interpreters to help them understand what is happening to them while they are detained.

To complicate matters, these children interact not only with their lawyers, if they are fortunate enough to have one, but with shelter staff, mental-health experts and government officials, and are often unable to understand who is acting in their best interest. As a result, many children quickly become overwhelmed and lost within a fragmented system.

Children are initially processed at the border, where they are held in CBP holding stations, or “hieleras” – the Spanish word for iceboxes -- as Border Patrol agents have called them, generally on the Southwest Texas Border.⁵¹

Most of the hieleras are located in the Rio Grande Valley. Upon arrival in the United States, many children are suffering from dehydration, hunger and fever, but there is no medical staff based at any the facilities.

Children describe temperatures in the hieleras as so cold that their lips turn blue and crack and their fingers become numb. Medication and jackets are taken away for health and security purposes, according to CBP. These crowded hieleras often have no mattresses, beds or chairs, and there is a single sink and toilet in plain view of other detainees and CBP officers. Detainees are not given even the most basic supplies, like toothbrushes, soap, combs and sanitary napkins, and are unable to shower or change clothing. Children have reported that the only water available is provided in a single thermos, filled with bleach scented water, that burns the throats of those who drink it.⁵²



“There were so many allegations of wrongdoing involving the internal affairs division you’d need a flow chart to sort them all out.”

CBP official who asked to remain unnamed

Detainees get little food, usually half-frozen bologna sandwiches, and bright overhead lights are left on 24 hours a day. A 2011 report by the group No More Deaths found that nearly 7,000 of the 13,000 immigrants interviewed reported inhumane conditions in CBP cells, and about 3,000 said they suffered extreme cold.⁵³

I had no thoughts of getting papers, the only thing on my mind was my life. The trip was nothing compared to what would have happened to me if I stayed [in El Salvador]. Everyone beat me, nobody wanted me there. There are many gangs, they are kidnapping kids, you find dead kids in water wells; you see this all the time. And the police work for the narco-traffickers with their dirty business.

Javier, age 13, El Salvador

In July 2013, a 7 year-old-child with severe mental and physical developmental disabilities was detained by CBP on the Texas border for nearly one week under inhumane conditions. Due to his disabilities, he is unable to walk, talk, or feed himself.

He weighed 25 pounds at the time of apprehension and was summarily cleared for travel to Miami on a commercial flight by a physician at a local Texas hospital. Upon arrival in Miami he was rushed to the hospital, where he spent 42 days and had two major surgeries. AI Justice has filed a Federal Tort Claims Act (FTCA) complaint on the child’s behalf.⁵⁴

In June 2014, five civil and human rights groups, including AI Justice, filed an administrative complaint against CBP on behalf of more than 100 children, seeking immediate reforms.⁵⁵ The complaint was filed in response to widespread abuses of unaccompanied immigrant children at the hands of U.S. border officials, including verbal, sexual and physical abuse, prolonged detention in squalid conditions, and a severe lack of basic necessities such as food and water.

The complaint describes CBP agents denying necessary medical care to children as young as 5 months old, refusing to provide diapers for infants, confiscating and destroying legal documents and personal belongings, making racially charged insults and death threats, and strip searching and shackling children in three-point restraints during transport.⁵⁶ Reports of such abuse have been documented and reported for years, but no reforms

have been implemented, nor have any actions been taken to hold agents accountable.⁵⁷

Shortly after crossing the border, I was placed in a hielera. One of the officials told me that a woman was going to pat me down, but as I was waiting my turn I noticed that it was actually a man. The girl that went right before I did didn’t actually get patted, she was only asked if she was carrying anything; she said no and was moved along. However, when it was my turn, the same male official told me to spread my legs and arms. He began to touch me up and down my legs and in between my thighs. He also touched over and underneath my breast. I felt very uncomfortable. Another official noticed and told the officer touching me to stop.

Rosa, age 15, Guatemala

An investigation by the Houston Chronicle found that children in government custody have also been

sexually abused. In response to a FOIA request, the paper received copies of 101 “significant incident reports” from March 2011 to March 2013 involving allegations of abuse.⁵⁸

The Office of Refugee Resettlement (ORR), an agency of the U.S. Department of Health and Human Services (HHS), is charged with the children’s care and custody.⁵⁹ When DHS apprehends an unaccompanied immigrant child, it must turn the child over to ORR’s Division of Unaccompanied Children’s Services (DUCS). Immigrations and Customs Enforcement (ICE) is legally mandated to transfer the child from CBP custody to ORR within 72 hours, absent exigent circumstances, but often has not done so.⁶⁰

According to ORR officials, as of May 2014, the average length of stay in its facilities was about 35 days and about 85% of the children served were released.⁶¹ Officials are required to try to release the children to relatives in the United States if at all possible and to ensure that persons taking custody of the children are able to provide for their “well-being.”⁶²

When I stated my age, the officer had a smirk on his face, he looked at me and said “You’re not sixteen. I told him, I can show you my birth certificate to prove it, but he got angry and said he didn’t ask for it, he didn’t need it. About ten immigration officers kept accusing me of lying about my age. When I handed my birth certificate to one of them, he grabbed it and looked at it, crumpled it up, and tossed it into a trash bin. I didn’t think this was going to happen, I simply thought I would be sent back to my home country.

Miguel, age 16, Honduras

I was really scared when I was about to cross into the United States. Our coyote was driving us next to the river [Rio Bravo] and was high, I could see marijuana all over the car floor.

Alberto, age 14, El Salvador

The U.S. Administration for Children and Families (ACF) provides grant funding to 63 non-profit organizations, including faith-based organizations, to operate shelters around the country to care for these children until they can be placed with sponsors, usually parents or other relatives, while awaiting immigration removal proceedings. In early July, 2014 the ACF had space for about 6,600 children in their permanent shelters and specialized placements (such as foster care for very young children) – an increase of about 4,700 over the shelter capacity existing in July 2011 and an increase of about 1,700 since January 2014. In addition, the ACF opened three emergency shelters that could serve a total of 2,975 children.⁶³

Once children arrive at a shelter in Miami, there is a great sense of relief because they can call their family, have a bed, have enough to eat, and learn about their basic legal rights.

AI Justice is part of a group of national advocates working to help CBP develop meaningful standards of care in the hieleras. AI Justice acknowledges that Border Patrol agents have a difficult and oftentimes thankless job and many of them do their job well.⁶⁴

“Get in the dog kennel.”

CBP Officer statement to AI Justice client apprehended in Texas, 2013.

Below are statements from some of the children who were detained in the hieleras in the past two years.

SARA, AGE 14, HONDURAS

I was held in three different hieleras. I spent my time in the first hielera trying to sleep on the floor between bouts of extreme hunger. In the second hielera, I was separated from my 16-year-old cousin and was scared because I didn't know if we'd see each other again. I spent three days in the third hielera, with about 20 other people. I wasn't allowed to shower and was really uncomfortable.

We were forced to sleep on the floor and had no blankets until the second day. The blankets we were given were aluminum foil-like and frozen solid and didn't keep us warm. It was almost impossible to sleep because the floor was so hard and the room was so cold. There were no clocks in the room and the lights were always on. I lost track of time and felt like I was in jail. Soon after we received the blankets, another minor got up to walk around the room and stopped for a minute in front of the window in the cell. The officers immediately and abruptly entered the room, yelled at her and took away blankets as punishment from almost all of us except for the three youngest girls, who were 8, 7 and 4 years old. As soon as the officers left the room, they blasted the air conditioning and the temperature became unbearably freezing. Everyone was too scared to ask the officers to turn down the air conditioning to a reasonable temperature because we didn't know if they would get angry and punish us in other ways. Any time I moved, I felt like they would punish us for no reason.

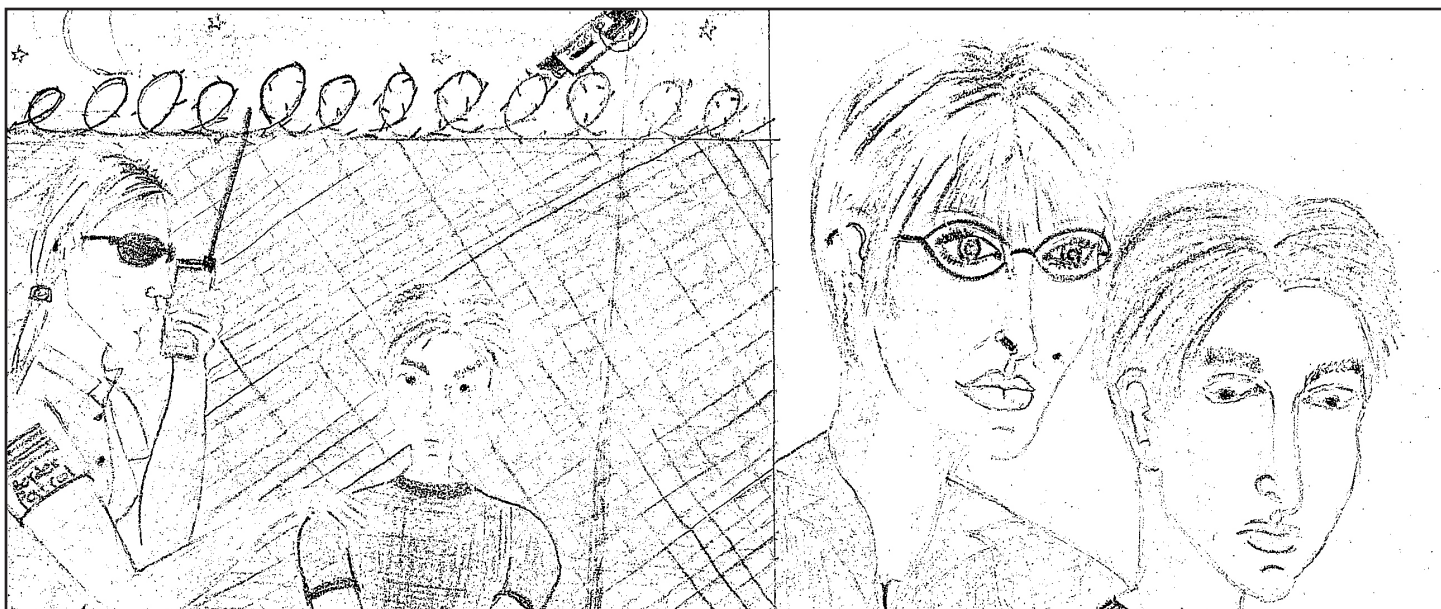
On the third day, we were handcuffed by our hands and feet before being taken out of the cell. The handcuffs on my hands were very tight and were connected to a chain around my stomach. We were told we were leaving but then were put back in the cell for about another 30 minutes without an explanation. Those 30 minutes felt like the longest minutes of my life. I was scared and didn't know if I would ever get out of detention.

As we were taken out of the cell again, an officer began to make fun of us and said “Quiere que les tome la foto para subirla a facebook? Les enseño a sus amigos y familia como están ustedes ahorita para que no vengan aquí a los Estados Unidos.” [Want me to take a picture of you all and upload it to facebook? I'll show your friends and family how you are right now so that they don't come to the United States.] I was in shackles and felt really ashamed.

I was taken to the airport in a car with a couple of other minors, including the 8-year-old and 4-year-old who were in the third hielera with me. We arrived at the airport around 11 a.m. and were kept in the car until 4 p.m. During these five hours, we were not allowed to go to the bathroom and we weren't given anything to eat or drink. The officers waited outside the car and joked around with each other. They didn't check on us and we couldn't get their attention because the windows were rolled up. It was so hot outside and the air inside the car was extremely stuffy. I felt like I was going to suffocate.

One of the officers eventually opened the car door to get something. The 8-year-old said that she was very thirsty and hungry, and the officer replied, “I'm also thirsty and hungry” before closing the door. The two little girls began to cry and didn't stop for over an hour.

The handcuffs weren't taken off us until shortly before the plane landed. They were extremely tight. On February 7, 2014, when I spoke with Americans for Immigrant Justice exactly a week after arriving at the shelter, I still had marks on both of my wrists from the handcuffs.



MILTON, AGE 17, GUATEMALA

As I was getting out of the van near the border, one of the immigration officers came over and hit me on the head with his flashlight. I fell to the ground, and he kicked me on the arm and waist and I had cuts on my elbow from his kicks. He also kept hitting me on the shoulder with his flashlight. I didn't know why he was beating me, because I had surrendered very peacefully. After that, he dragged me up off the ground, handcuffed me and put me in a car.

I arrived at an immigration checkpoint at 6:30 a.m. I felt that they treated us all like animals. They would speak harshly to us and order us around. When someone didn't hear them call his name they yelled at him. The officer would yell, "Hey, didn't you hear me, you animal." After that they took us to an immigration detention center. We arrived around 8 a.m. There I was interviewed again. The man interviewing me didn't speak Spanish very well. He asked me to sign some documents, but he wasn't able to explain in Spanish what they were. Another immigrant who spoke a little bit of English later told me that there was a question on one of the forms asking if I had been hit by immigration officers. The officer marked "no" without even asking me the questions. I signed the document without knowing what it said.

After they interviewed us they put us all in a cell. We were there 12 hours and they did not give us any food during that time. There were no chairs or beds in that cell. The only way to use the restroom was a toilet in the cell that offered no privacy.

I was transferred to another detention center, where I was held for only an hour. Then I spent three hours in another center. They still had not given us any food. They took me from the third detention center at 1 a.m., and transferred me to a fourth center. It was a four-hour drive, so I arrived around 5 a.m.

From there we were taken to a cell with about 48 men and boys in it. They had us lie down on the floor and gave us a blanket to use. Finally, around 8 a.m. they gave us some food. I was there for three days. During that time they told us we had to remain lying down day and night. If I sat up or stood up, they would come in and scold me, and tell me that the next time I sat up they would punish me by making me stay there for a week. I was so discouraged and felt like I was in jail. It was hard to stay lying down for so long. My leg, elbow, and head were in a lot of pain due to the immigration officer who hit and kicked me. If I tried to sleep on my side, my head would hurt so much I couldn't fall asleep.

"I am a Latina, and a legal immigrant. I was forced to leave my country at the age of five due to political unrest. I know very well what it feels like to be a foreigner in a strange land, the overwhelming feeling of having to start all over again in a new country. But I also know how it feels to be embraced by a country, to be appreciated, to just be given a chance to dream. As someone with great respect for this country, my hope is that in the near future children will have the right to a free attorney so they at least have a fighting chance to win their case. It's the American way. We need to treat these children with dignity and respect, see past the prejudices and the fear of those who are different, and embrace the unique potential that these young children offer us. Trust me, you won't be disappointed."

**Michelle Abarca, AI
Justice Directing Attorney,
Children's Legal Program**

NANCY, AGE 15, HONDURAS

Twenty or thirty other girls and I had to sleep on the floor in our cell because there were no beds. I was very cold because my clothes were damp and I was barefoot because I lost my shoes in the desert. When I asked for sheets to cover myself with, I was told there were no sheets. I was shivering all night and felt very nauseous and very sick. I asked a guard if I could have some medication for the nausea and sickness but he said they didn't have any and my sickness would pass. I didn't sleep more than one hour the entire night.

Around 5 a.m., an officer was doing roll call. I was lying down on my belly, praying face down on the floor, and didn't hear him call my name. He kicked me really hard in the right thigh and yelled at me, asking if I had heard him say my name. I apologized and said I was really sorry but I hadn't heard him. I was very afraid of him at that moment, and I was in lot of pain from his kick.

That evening, while I was praying, the same officer who kicked me early that morning came in and kicked me again, this time on my left thigh. He didn't say anything but he gave me an intimidating look. This time the pain was even stronger. To this day I still don't understand why this officer had it against me. I never did anything to him and I always followed all the rules.

When I came to the Miami shelter, my thighs were still hurting because of the kicks. When I was taken to the doctor, I was prescribed medicine for the pain. Since being released from the hielera I've had

reoccurring nightmares, where I'm kicked, and all I see is that officer's face and the way he always looked at me.

MICHELLE, AGE 17, GUATEMALA

I arrived in the United States with my 1-year-old daughter. I was nearly killed and so was my baby. I left with her to save our lives. We were held in three different hieleras for about nine days.

I wasn't allowed to change my daughter's clothes at any point during our nine-day stay in the hieleras. I was yelled at profusely at the first hielera by a male officer who told me, 'You are just coming to this country to steal our money.' I was only allowed to change my daughter's soiled diaper one time during the entire day that I was held at the first hielera. My daughter cried during the entire nine days because of the extreme discomfort caused by her soiled diaper, and her lack of warm clothing. She was never given a blanket.

I asked many officers for two days for diapers and was always told "they're coming, don't worry," but the diapers weren't given to me until the third day of my stay at the second hielera. When I asked for medical attention due to my daughter's cold, I was told that there was no medical staff available, and there was no medication provided for my daughter during that whole time.

I was given Gerber-brand baby food only at the third hielera where I stayed for three days. My daughter cried from hunger throughout our stay in all of the hieleras.

“I wasn’t worried because I had my AI JUSTICE attorney and God.”

Marta, age 15, Honduras, featured along with her AI Justice Attorney on CNN’s “Latino in America,” 2011

LOST WITHOUT A LAWYER

While not all of the children fleeing Central America have a legal right to stay in this country, many do. They need a legal expert to review their situation, advise them and look out for their best interests. While some children want to be returned to their country as quickly as possible, most need an attorney to navigate the convoluted worlds of DHS, immigration law and state and immigration courts.

Pro bono attorneys with expertise in immigration, juvenile and family law are in short supply. According to a February 2014 report by the nonprofit group Kids in Need of Defense (KIND) and the University of California Hastings College of Law, most minors who appear in immigration court do so without a lawyer.⁶⁵ Syracuse University’s Transactional Records Access Clearinghouse (TRAC), which compiles immigration data, recently reported that 90 percent of unaccompanied minor immigrant children who lack legal representation are deported, while only 47 percent of those with attorneys are deported.⁶⁶

Children may be eligible for different forms of relief that would allow them to stay in the United States legally. The principle forms are:

- Special Immigrant Juvenile (SIJ) status, available to children who have been abused,

abandoned or neglected. Children with these claims must appear before a state court which makes certain requisite findings before a child is eligible to file for SIJ status with U.S. Citizenship and Immigration Services (USCIS). In Miami-Dade County, children generally appear before a Juvenile court judge but in other jurisdictions they appear in family or other state court.

- Asylum for children who have been persecuted or have a “well-founded fear” of persecution in their home country on account of one of five grounds: race, religion, nationality, political opinion or membership in a particular social group. In the case of unaccompanied minors, USCIS rather than the immigration court has jurisdiction and asylum officers hear the child’s case, even if the child is in immigration court proceedings.

- Special visas (U Nonimmigrant status or “U Visa” and T Non-immigrant status or “T Visa”) for children who are victims of certain crimes that occur in the U.S. or severe forms of trafficking.

Cases are reviewed by USCIS. To obtain legal status, an immigrant must present evidence supporting this claim, including personal documentation, expert witnesses, law enforcement certifications, incident reports,

affidavits, and information regarding home country conditions something children acting on their own cannot do. Children also must know which form to submit in order to change their address with the court. If a child moves to a different jurisdiction, a motion to change venue must be filed with the court where their proceedings are currently pending.⁶⁷ Like adults, when children do not appear for their initial court hearing they may be ordered deported “in absentia.”

It can take several meetings before an attorney can determine the basis of a child’s claim to remain here, not only because they are children but because of the circumstances of their cases. If, for example, a child was abused for years by a parent, he may not mention this to an attorney or judge because he thinks of the abuse as normal or something deserved. When children are sexually abused or assaulted, they may be too ashamed to immediately share this information with strangers.

Making a case is particularly challenging for children whose experiences do not neatly fit traditionally recognized asylum claims, such as fleeing political or religious violence. For example, countless children from Central America have fled their communities in fear of local gangs. For years, despite

“The help I received [from AI Justice] was magnificent. I think a thank you from me is very small. It’s such a great help what they do.”

Oscar, age 17, Honduras

the well-documented inability of these countries’ governments to control extremely dangerous gangs with transnational reach and power, immigration law does not generally recognize children persecuted by gang members as a “social group” entitled to asylum protection. Thus, these claims are often denied.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPPRA) mitigates a legal void by mandating HHS -- in effect the agency that has custody of unaccompanied minors--to ensure assignment of pro bono counsel for all detained unaccompanied children “to the greatest extent practicable.” It also authorizes HHS to appoint independent child advocates to promote the best interests of child trafficking victims and other vulnerable children.⁶⁸

In their July 22, 2014, letter to Congressional leaders, the NAIJ noted:

“Judges have found that cases with legal representation generally 1) reduce the number and length of proceedings for benefits for which individuals are ineligible; 2) generally require fewer continuances for preparation (including when applications must be processed with other

agencies); 3) obviate appeals based on a lack of understanding regarding legal rights or concerns about fairness; 4) take less hearing time for judges because they are better researched and organized; and 5) tend to reduce the number of futile claims which utterly lack a basis in the law.”

Family members have brought their children to the Miami Immigration court from as far away as North Carolina when venue has not been changed, because neither the children nor the family members understand how to complete this otherwise routine process.

Support for providing children with legal representation is widespread. U.S. Senator Durbin (D-Illinois) included measures in Senate bill S.744 that would allow judges to appoint free attorneys for unaccompanied minors. As previously noted, in July 2014 a nationwide class-action lawsuit challenged the federal government’s failure to provide children with legal representation as it carries out deportation hearings against them.⁶⁹

Contrary to many reports, the majority of children do show up for their court hearings. TRAC has indicated that most children not only attend their immigration

hearings, but at least 90 percent attend when they have a lawyer.⁷⁰

The Obama Administration is providing \$2 million in grants for 100 lawyers and paralegals to represent children in cities with large immigrant populations, including Miami. This initiative is a collaborative effort between the Department of Justice and the Corporation for National and Community Service, a federal agency that operates the AmeriCorps program. The funding will go to non-profit groups who will supervise the new lawyers and paralegals. While this initiative is welcomed, navigating the complexities of immigration, state juvenile and family law is no easy task, and lawyers cannot be trained to represent a child overnight. The newly recruited legal staff will need extensive training and supervision, which will require a significant investment of time and scarce resources from already overwhelmed pro bono organizations.

PATHS TO LEGAL STATUS

Below are further details regarding the three types of immigration relief for which the highest number of children we encounter are eligible.

SPECIAL IMMIGRANT JUVENILE STATUS

In 1990, through the passage of the Immigration Act (P.L.101-649), Congress recognized the need to protect unaccompanied children who have been adjudicated dependent by the state court due to abuse, neglect or abandonment or other similar findings under state law. These children may obtain SIJ status, which enables them to apply to adjust their status to that of lawful permanent resident.

While SIJ status is the most common form of relief for unaccompanied immigrant children, the complicated process involves both immigration and State court proceedings. The 2008 reauthorization of the TVPRA has resulted in an increase in the number of children eligible for SIJ status by broadening those eligible for this form of relief.⁷¹

Whether the judge declares a child dependent, decides it is in the child's interest to stay in the United States and issues a "best interest order" depends principally on documents and testimony, which can be difficult to obtain. Once a state court judge makes the requisite findings, USCIS must ultimately decide whether to grant SIJ status and allow the child to become a lawful permanent resident. If a child is in removal proceedings, jurisdiction over his application for lawful permanent residence lies with the immigration court, unless his proceedings have been terminated.

Only 989 children obtained legal

U.S. residency as Special Immigrant Juveniles in 2008.⁷²

Yet the numbers remain small despite the tens of thousands of unaccompanied children now arriving annually. The low numbers also reflect the difficulty of finding pro bono lawyers to properly prepare complicated cases for eligible children.

ASYLUM/CERTAIN DANGER IN THE HOMELAND

Evidence of persecution in a faraway country may be limited or difficult to retrieve. Witnesses, documents and statements often are hard to obtain. Immigrant children may apply for asylum, with additional protections afforded by the 2008 anti-trafficking law. However, the standard for asylum – past persecution or a "well-founded fear of persecution"—on account of race, religion, nationality, political opinion or membership in a social group—is difficult to prove. The U.S. does not always interpret our asylum laws as broadly as suggested by the UNHCR, and obtaining asylum for children is an uphill battle. For example, even if someone has clearly been targeted by a gang member, he must convince the judge that this falls under one of the five protected grounds.

Asylum provisions in the TVPRA⁷³ exempt unaccompanied children from having to apply for asylum within one year of arriving here. That is only fair, since few arriving children know what legal relief is available,

how to seek relief, or have access to legal representation. These and other provisions more appropriately address the special needs of vulnerable children seeking asylum.⁷⁴

About 1,500 asylum cases have been filed nationally since October 2013.

"T" AND "U" VISAS

Child victims of crimes and severe forms of trafficking may be eligible for "T" or "U" visas, which Congress created in the original Trafficking Victims Protection Act of 2000. Unfortunately, evidence suggests that only a fraction of child victims are identified as eligible for this relief and, thus, never seek relief.⁷⁵ This further indicates the great need for better screening of unaccompanied children by federal agencies and advocates who come into contact with such children.

The cases that do come to light tend to be complicated and lengthy. One reason for this is the number of agencies and people that must collaborate on these criminal and immigration cases. Among them are DHS, federal or local law enforcement, the victim's child advocate and an immigration attorney, to name a few. Survivors, moreover, are traumatized and may face ongoing threats of violence by traffickers and criminal organizations, deterring them from reporting their situation to authorities or even attorneys.

STATEMENTS FROM AI JUSTICE CLIENTS

“I worked in the fields, planting corn and beans, ever since I was forced to stop going to school when I was in second grade. My mother would beat me with belt buckles and throw knives, china plates, and cups at me. She made me kneel on corn over an hour at a time. My mother told me I was an idiot and she should have aborted me. I never met my father. I didn’t get fed often, even after working long hours. I was treated like a dog. When I was 13 years old, a man I worked with forced me into a wooded area and raped me. He raped me because he told me I am “special.” That makes me feel really guilty and ashamed. I also feel really alone and sad, and think about committing suicide. When I was 15 I suffered from spastic cerebral palsy and the left half of my face became paralyzed. I had to come to the US to escape and I am very afraid to go back because I know my mom will beat me and that man can rape me again.”

Jose, age 17, Guatemala (Jose has since been diagnosed with Chronic Post Traumatic Stress Disorder, and Dysthymic Disorder.)

“When I was two years old my father started beating me. He forced me to stop going to school when I was 12 to work on a construction site. I worked there for three years and my father took all my wages. When I tried to stand up to him, I was beaten real bad. Once he tied me up by my wrists and hung me from the ceiling for an hour, beating me with a stick the whole time. In desperate, I left home when I was 15 and went across Guatemala and Mexico, walking, taking a bus and a train. When I was in immigration detention, I was identified as a victim of human trafficking. “

Juan, age 16, Guatemala

Often times working with children is like peeling an onion, you have to pull off many layers before you reach the core. It is essential to build a relationship of trust. Unlike their adult counterparts, child survivors of human trafficking may not understand that it is in their best interest to disclose their history of horrific abuse. Unfortunately, many children are trafficked by their own family members or other trusted adults so naturally are reluctant to open up to an unknown adult. It is essential to be aware of this potential family involvement and to navigate these issues with care.

The increased migration of unaccompanied minors has created an environment conducive to human trafficking and exploitation of vulnerable children by sophisticated criminal organizations or by their human smugglers or “coyotes.” AI Justice has represented countless minors who were smuggled into the United States only to be held against their will and forced to engage in commercial sex acts with adults. We also have helped many children who were victims of human trafficking in their country and came here seeking protection. It is essential to carefully screen each child with human trafficking in mind as their victimization could qualify them for nonimmigrant status or asylum.

Jessica Shulruff

Senior Attorney, AI Justice Domestic Violence and Human Trafficking / LUCHA Program



CHILDREN LOST IN THE SYSTEM

An unknown number of unaccompanied children⁷⁶ get past the border and find their way to U.S. communities without ever encountering immigration authorities. Sometimes these unaccompanied minors are discovered in state courts after they have been abused, abandoned or neglected by caretakers. Sometimes they end up on the street or in runaway shelters. In countless other cases, children turn 18 and have few chances of becoming legal residents on their own. Some, if identified earlier, could have been helped with legalizing their status

while they were minors. Unless they are deported or leave on their own, they will be destined to work low-wage jobs, have limited educational opportunities, and live in the shadows in this nation of immigrants.

In recent years AI Justice has seen a marked increase in the number of children who have lived in the United States for some time before being detained and placed in federal custody and removal proceedings. Whether detained or still living in the community, many of these children may be eligible for legal U.S. status, but do not know this and have no one to tell

them that relief is available.

Congress has directed the HHS secretary to ensure pro bono counsel to unaccompanied children “to the greatest extent practical.” Congress further noted that the HHS Secretary is to “make every effort to utilize the services of pro bono counsel who agree to provide representation...”⁷⁷ While many legal services providers have stepped up to the plate, the demand for services far exceeds their ability to meet the need.

"I never thought that I would have legal status in the United States, that wasn't even something that I thought about before leaving, the only thing I thought about was being with my mom."

Felipe, age 12, El Salvador

IN-COUNTRY REFUGEE PROCESSING

In an effort to reduce the number of children crossing our borders, the Obama Administration and many members of Congress are considering a way to identify children eligible for refugee status in their home countries. Current discussion has focused on children from Honduras who would be interviewed by U.S. officials or by U.N. personnel. If successful, the pilot program would be extended to Guatemala and El Salvador.⁷⁸

The Administration is considering providing protection to persons under age 21 as well as granting humanitarian parole to some who do not qualify for refugee status. The Administration's draft plan notes that 64.7 percent of

unaccompanied minors who applied for asylum this year were granted relief.⁷⁹

Several concerns about in-country refugee processing exist. First, the legal definition of "refugee" is someone fleeing based on persecution or a well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group.⁸⁰ With few exceptions, children would have to fall under the latter category in order to qualify. This is a very murky area of immigration law and could prove to be an insurmountable obstacle for most children in need of protection. They need to prove they

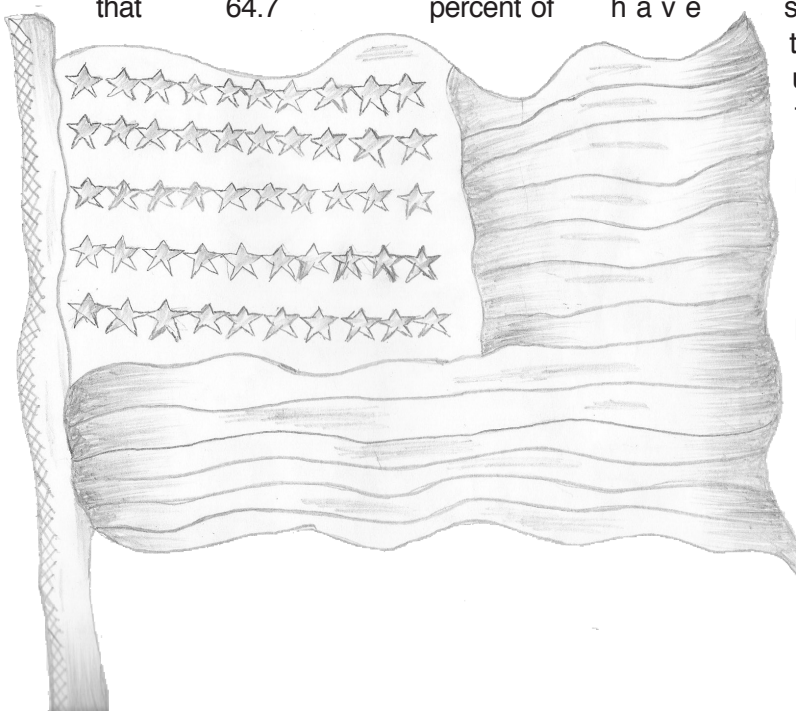
suffered harm that the government was unable or unwilling to control. Even more difficult, they must prove they are a member of a particular social group in need of protection, and in all likelihood with little to no access to a free attorney.

Moreover, there are a limited number of refugee designations

available annually.⁸¹ While a recent bill introduced by Arizona Republican Senators John McCain and Jeff Flake would increase the number of refugee visas by 5,000 each for El Salvador, Honduras, and Guatemala, the bill would also allow for the expedited removal of all undocumented immigrants attempting to enter without proper documentation.⁸²

Additionally, by going to a processing center children may be putting themselves in harm's way. Following the 1991 coup d'état in Haiti, the Port-au-Prince office for persons seeking refuge was located close to the police station, such that authorities could see who was seeking help. And, those in remote areas of the country had little opportunity to access the chosen sites.

Reducing the number of children who risk their lives attempting to reach our border is a laudable goal. However, unless children have a viable opportunity to obtain refugee status or other humanitarian relief while in their home countries, it is imperative that children who arrive at our borders have the legal right to a full and fair hearing before they are sent home.



“I didn’t even know that obtaining [legal] documents was possible, I had no idea that opportunity even existed. I never dreamed of a life in the United States.”

Amy, age 17, Honduras

THE BLAME GAME

Many Republicans have suggested that an unprecedented number of children are arriving because the Administration, in granting Deferred Action for Childhood Arrivals (DACA)—which permits undocumented youth who arrived in the United States as children before June 15, 2007, a two-year reprieve from deportation—sent a message to Central Americans that once they cross the U.S. border they will be allowed to stay. A recent congressional hearing, “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” focused on lax border enforcement as a cause for the increase in the number of arrivals.

In July 2014, 33 members of Congress wrote President Obama urging him, among other things, to end DACA. On August 1, 2014, the House of Representatives passed House Bill 5272, which would end the DACA program, preventing young people from renewing their work permits. Senator Ted Cruz (R-Texas), an immigrant whose mother was born in Canada and father was born

in Cuba, was instrumental in garnering support for the bill. On August 1, 2014, yet another bill that would strip due process rights for unaccompanied minors from Central America passed the House. While these bills have virtually no chance of becoming law, they reflect Congress’ inability to work together to effectively address critical issues.

“I had a meeting with the Republican leadership this morning and I was told that immigration reform will not go forward this year. It’s a lost historic opportunity. It’s highly irresponsible not to deal with the issue. We are in effect abdicating our duty.”

Congressman Mario Diaz-Balart (R-FL)
El Nuevo Herald July 10, 2014

Children almost never tell us they fled because they believe they will be able to stay in the United States once they crossed the border. They have no idea what DACA is and they fully understand how treacherous the journey here is.

Another reason given for the recent surge is the 2008 TVPRA, which was passed with bipartisan support and signed by President George W. Bush.⁸³ The law gives unaccompanied children from Central America the right to a hearing to make their case to remain in the United States. The law also requires that efforts be made to reunite children with family members if it is in the child’s best interest. Many Republicans and some Democrats want to do away with this law, which has helped curtail human trafficking. Prior to its passage, children from Central America were sent back without regard for what danger—abusive parents, rape, persecution by gangs—might await them back home.⁸⁴ Indeed, children arriving from Mexico rarely get screened or advised by an attorney looking out for their welfare before they are sent back.⁸⁵

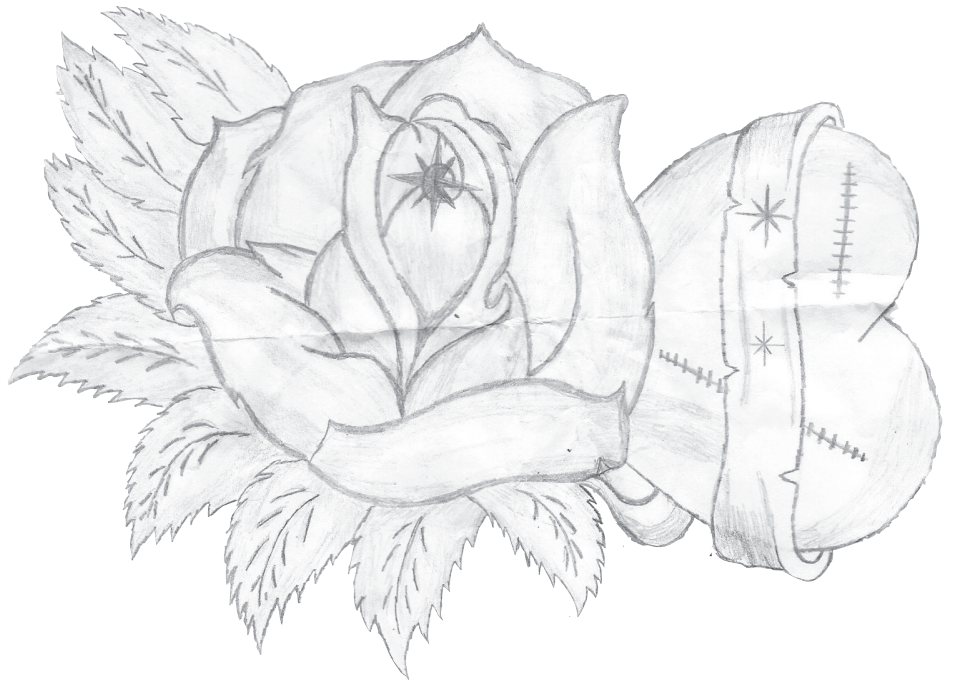
Democrats have suggested the current humanitarian crisis has been caused by the failure of Republicans in Congress to move forward on comprehensive immigration reform. However, the recent surge of children arriving here is not new. Children’s

advocates and others have been sounding the alarm bell for years.

While many experts agree that the principal reason for the recent surge is due to the uncontrolled gang violence and drug cartels in the Northern Triangle countries,⁸⁶ arguably both push and pull factors are at work. Innocent, vulnerable children, however, should not be caught in the political cross-hairs.

“We are tripping over our own history in failing to acknowledge how US foreign policy helped create the path that United States deeply supported right-wing dictatorships that fueled decades of civil war in the 1970s and 1980s, especially in El Salvador and Guatemala, making the whole region vulnerable to what we see now—weak governments, regional gang warfare and a booming drug trade. U.S. foreign policy helped create border crisis.”

“U.S. Foreign Policy Helped Create Border Crisis”
Editorial, Miami Herald, July 7, 2014



“Individuals with strong cases are trapped in limbo inside the United States while family members abroad become ill and die, family members who can provide them with eligibility for an immigration benefit die, and their claim for relief becomes stale by the passage of time.”

Letter from NAIJ to Speaker John Boehner and Senate Leader Nancy Pelosi, July 22, 2014

CONCLUSION

The Administration, DHS officials, judges, ORR and pro bono attorneys are all scrambling to deal with the sharp rise in unaccompanied children reaching our shores. In May 2014, DHS Secretary Jeh Johnson declared a “level four condition of readiness” in the Rio Grande Valley after visiting an overcrowded Border Patrol jail housing children.

Offering these children the chance to be heard, to tell their stories to an empathetic ear after experiencing nothing but hostility from others is invaluable. Our duty is to give them the chance to tell that story, and to offer them protection where it is needed.

They are not statistics, or problems, they are kids with faces and names and terrible stories that sometimes haunt me just from hearing them.

Julie Irvin,
AI Justice Program Coordinator

On July 25, 2014 President Obama met with the presidents of Honduras, Guatemala and El Salvador in an effort to diminish the flow of children coming through Mexico.⁸⁷ They told President Obama that the United States needs to assume some responsibility for the crisis, given “the ambiguity that has been the hallmark of the debate of the reform of the immigration process [in the U.S.].”⁸⁸

Sadly, the recent influx of unaccompanied children reaching our shores in search of protection has only diminished American’s appetite for comprehensive immigration reform. In recent years, a majority of Americans supported permitting those who have lived here for years and contributed to our economy to come out of the shadows and earn legal status. Recent polls, however, suggest that support is waning.

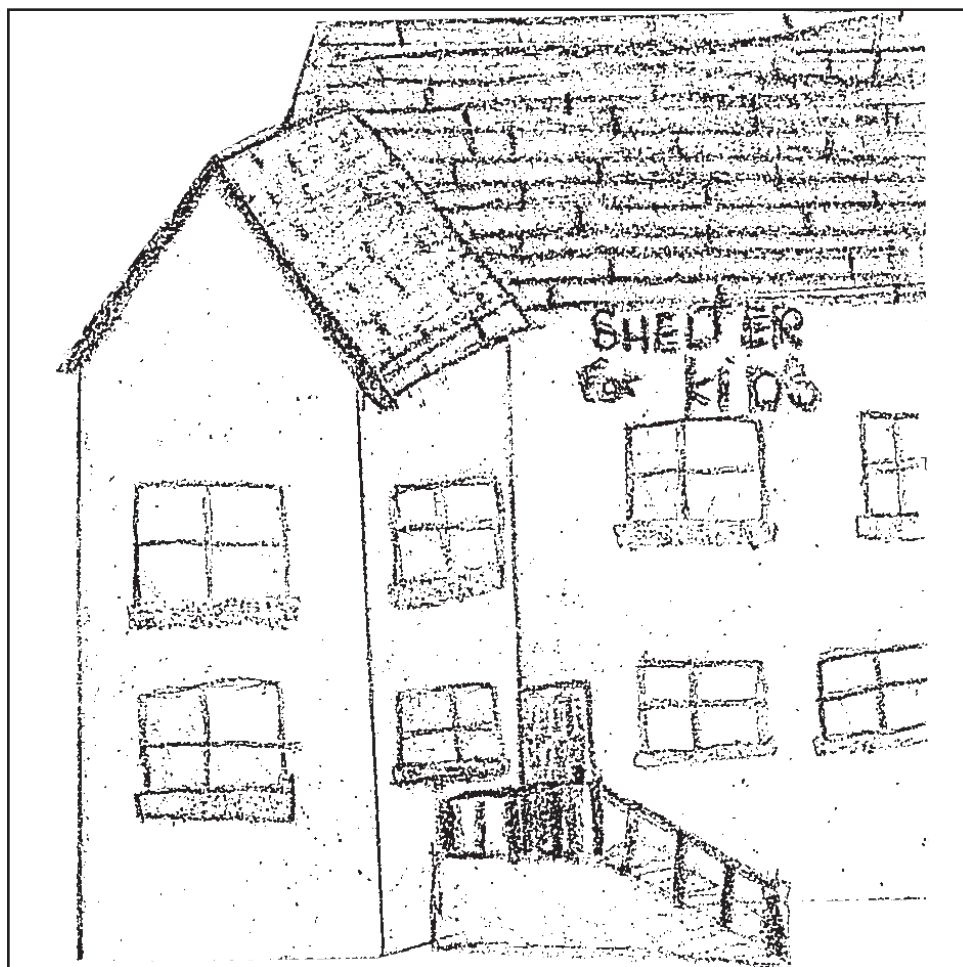
Clearly, addressing the root causes of the reason so many children feel compelled to flee Central America is key to getting a handle on the crisis. Washington must increase spending to

support public security and other important unmet needs in these countries. Even more important, officials in the home countries must do their part to institute law and order and bring criminal gangs to justice. Mexico, the transit corridor, also needs to work harder to crack down on smugglers.⁸⁹

Too many children have suffered rape, loss of limbs and even death attempting to escape to the United States. In July 2014, a 15-year-old Guatemalan boy was buried after his decomposed body was found in the Rio Grande Valley.⁹⁰ Sadly, there are far too many such stories.

The solution, however, is not building more walls or militarizing our 1,950-mile southwestern border.⁹¹ Many children are actually seeking out border patrol officers as soon as they cross because they are desperately seeking help.

And the solution is not to expedite the children’s cases and send them back to their home countries without sufficient due process. We must not further harm them by short-changing



their opportunity to fairly make their cases to stay here.

Most important, all children facing deportation should be afforded pro bono attorneys so they have a fighting chance to make their case. Every year thousands of children are forced to navigate the complex immigration court process alone. They face experienced DHS lawyers in court who argue for their deportation.

There are not enough hours in my day. At the end of the day, I feel physically, mentally, and emotionally drained. The work is not only difficult because of the number of children that we see, but because of the heart-wrenching stories we hear from them. It is difficult to go home at the end of the day and stop thinking about the children and the horrors that they have experienced or witnessed. As difficult as it is to do this work, I try to take comfort in the fact that what we do on a daily basis changes lives.

Farahnaz Jamette, AI Justice Staff Attorney

The fact that almost 60 percent of the children UNHCR surveyed might qualify for lawful status clearly indicates the need to ensure full and fair hearings. Concerns over a surge in the number of children arriving should not trump our international obligation to protect children fleeing persecution or other harm.

The administration asked Congress for \$3.7 billion in emergency funding to deal with the “urgent humanitarian crisis,” including increasing the number of Border Patrol agents,⁹² and

I have been working in children's issues for several years now, and have heard my fair share of heart-wrenching stories. I thought I was hardened enough to hear it all until I started hearing the stories from six and seven year olds. It is difficult to keep your heart from melting when a six year old little girl tells you that she had to leave her home because she was afraid to play outside, to go to school, to just be a kid. In such a short little life, she has seen so much and yet sits before you as just that—a kid, in search of safety and an opportunity for a better life. They leave because they have no other choice. We owe them the opportunity they seek, not just because international law implores us to do so, but also because it is the American thing to do.

Marissa Rios, AI Justice Staff Attorney

immigration judges as well as opening new detention facilities.⁹³ Nearly half of the funds requested would be used to improve care for the children while their cases are pending. As Congress was

packing to leave for summer recess, a House bill allocating \$694 million was passed, an amount that does not begin to address the need.⁹⁴

Recent reports indicate that the number of children arriving at the border has slowed down.⁹⁵ Most importantly, there have been surges in the number of immigrants fleeing their countries for the United States before. In the 1980s, tens of thousands of Cubans⁹⁶ and Salvadorans arrived, and after the war with Vietnam, countless Vietnamese children arrived. In the 1960s, 14,000 children from Cuba arrived. We call them the “Pedro Pan” children; many were housed in one of the Miami shelters housing Central American children today.

We need to think of the innocent children arriving today with the same measure of understanding as we did with the Pedro Pan children. Many of those immigrants are highly successful professionals who have helped make Miami the dynamic city it is today. No doubt that many of the children now fleeing, if given the same opportunity, would also make us proud.

These kids come here because home is not safe. They come here because even though they stopped going to school to avoid interactions with gang members, the gang members persist in finding them. They come here because they did not want to get raped again. They come here because they want to get to know their parents. Parents they barely knew who left them in the care of aunts, uncles and grandparents in order to work in the United States and send money to support them. These children are not villains and they are not threatening the American way of life. Their stories are about family, about survival. Listening to these children's stories gives me insight into the human spirit. It reminds me of the light and beauty that can shine even in the deepest of struggles.

Adlin Tuya, AI Justice Staff Attorney

“Orders of magnitude more people will apply for refugee status if they can just do it from their home countries.”

Mark Krikorian, Executive Director, Center for Immigration Studies

RECOMMENDATIONS

1. Ensure that children’s “best interests” are being protected.⁹⁷

Our country has failed to ensure that the “best interests” of children arriving at our border are being met, unlike most other civilized countries. Indeed, the United States is one of only three that has not yet ratified the U.N. Convention on the Rights of the Child. Immigration reform must include the protection and promotion of children’s fundamental rights.⁹⁸

More specifically, AI Justice calls on our government to take action to keep children safe from human rights abuses, violence and crime, and to ensure them access to asylum and other forms of protection as required by our laws. The Trafficking Victim Protection Reauthorization Act of 2008, which helps ensure that children fleeing violence and seeking refuge have meaningful access to protection, must remain intact. And unaccompanied children facing

deportation should be provided pro bono lawyers so they have a fighting chance to make their case for legal status. Congress should also incorporate a “best interest” of the child standard not only in custody determinations, but with all federal decisions affecting the child.

2. End inhumane conditions of detention (the “hieleras”).

Policymakers must ensure that immigration

reform guarantees adequate protection for children, including humane and safe conditions in CBP facilities on the border. Each year, tens of thousands of unaccompanied children risk their lives during treacherous journeys seeking refuge in the United States. Many were traumatized in their home country only to be traumatized again by U.S. officials on the border and during their transportation to local shelters. Sen. Barbara Boxer (D-California) introduced the Humane Short Term Custody Act in 2013 (S.1817), which would mandate basic minimum standards of care at all CBP holding stations and short-term custody facilities. Reforms would include:

- Binding and enforceable short-term detention standards.
- Enhanced CBP oversight, including creation of an independent oversight body.
- Creation of a uniform complaint process at DHS that includes confidential, expedited processes by



“Your continued commitment to circumvent Congress and implement policies contrary to the intent of immigration law sends foreign nationals the false hope that administrative amnesty is possible.”

Letter from 33 members of Congress to President Obama, July 2, 2014

which children can safely report abuse and receive timely recourse.

- Adequate training for all officers who may encounter unaccompanied immigrant children.
- Timely investigation into the complaints of abuse.
- Accountability for any agent who violates the law and/or agency guidelines.
- Publication of the results of any such investigations.
- Child welfare experts or asylum officers to replace or complement Border Patrol screening of children's cases for trafficking and persecution currently conducted by border patrol agents.

3. Reduce court backlogs without denying children's rights to seek immigration relief.

Immigration courts have been seriously understaffed and underfunded for years. Many more immigration judges are needed immediately, and immigration cases need to be adjudicated in a more timely manner. However, the expedited

manner in which children's cases are now being handled is counterintuitive, as the National Association of Immigration Judges (NAIJ) has noted. The administration must reverse its decision to expedite children's court cases to their detriment and ensure that each child has an opportunity to fully and fairly make his or her case.

4. Ensure that any in-country refugee processing is fair, safe and available to all children who seek it.

Given that so many unaccompanied children are now crossing our border to escape murder, rape and conscription into the cartels, the surge is not simply an immigration crisis, it is a refugee crisis. Governments in the Northern Triangle are clearly unable or unwilling to control the criminal activity. While in-country refugee processing in a child's home country is worthy of consideration, this process has proven far from ideal in countries such as Haiti and can only work if children deserving of relief can safely and fairly access it. Accordingly, processing sites

must be located in multiple locations throughout a country, including remote areas.

5. Provide humanitarian relief in the form of Temporary Protected Status.

The executive branch has the authority to authorize Temporary Protected Status (TPS) to permit persons living in the United States without legal status to remain here temporarily where circumstances in the home country, such as a national disaster, war or other situation, deem it necessary. TPS requires a formal designation by the DHS Secretary in consultation with the Secretary of State, and requires that the affected country formally request this designation from the U.S. government. Given the lack of pro bono attorneys, and the serious lack of resources for immigration judges, a grant of TPS would help relieve the courts of having to adjudicate cases in a manner that puts both judges and innocent children in need of protection at risk. Deferred Enforced Departure (DED) is another form of temporary relief that the Executive Branch has granted.

6. Address the root causes that are causing children to flee their countries.

We need to address the root causes of children's migration so that they can have some measure of safety in their home countries and do not have to risk their lives seeking freedom from harm. While the United States should provide more financial and other assistance, first and foremost there must be a unified commitment among political, economic and civic leaders in the Northern Triangle countries to seriously address the growing problems in their countries. Efforts must include building child welfare systems as well as developing more institutions including schools, police, courts and jails.

"A simple rule change requiring mandatory pre-hearing negotiations between the parties, with a view to stipulating noncontroversial facts leaving core issues for hearing resolution, would necessarily lead to shortened hearing times, easier resolution of cases, and allowing more cases to be heard."

Bruce W. Solow, former Immigration Judge,
Miami Herald, July 31, 2014

¹ Cheryl Little and Susana Barciela. "Broward Transitional Center: A 'Model' for Civil Detention." Americans for Immigrant Justice, March 1, 2013.

² Charu Newhouse al-Sahli, Chris Kleiser and Cheryl Little. "I running out of hopely..." Profiles of Children in INS Detention in Florida, Florida Immigrant Advocacy Center, October 2002.

³ Susana Barciela, Deborah Lee, Michelle Abarca and Cheryl Little. "After the Earthquake – Haitian Children Seeking Safety in the United States." Florida Immigrant Advocacy Center; December 7, 2011. <http://www.aijustice.org/docs/after-the-earthquake-haitian-children-intheus-FIACreport.pdf>

⁴ Cheryl Little and Susana Barciela. "Unleash the DREAM: End the Colossal Waste of Young Immigrant Talent." Florida Immigrant Advocacy Center; April 2010. <http://www.aijustice.org/docs/dreamactreport2.pdf>

⁵ Cheryl Little, Susana Barciela, Charu Newhouse al-Sahli. "Dying for Decent Care: Bad Medicine in Immigration Custody." Florida Immigrant Advocacy Center; February 2009. <http://www.aijustice.org/docs/reports/DyingForDecentCare.pdf>

⁶ Cheryl Little and Kathie Klarreich. "Securing our Borders: Post 9/11 Scapegoating of Immigrants." Florida Immigrant Advocacy Center; April 2005. <http://www.aijustice.org/docs/reports/securing-borders-post911-scapegoating-of-immigrants.pdf>

⁷ Cheryl Little and Charu Newhouse al-Sahli, "Haitian Refugees: A People in Search of Hope." Florida Immigrant Advocacy Center; May 1, 2004. <http://www.aijustice.org/docs/reports/HaitianRefugeesAPeopleinSearchofHope.pdf>

⁸ Cheryl Little and Charu Newhouse al-Sahli. "INS Detainees in Florida: A Double Standard of Treatment." December 2001. <http://www.aijustice.org/docs/reports/INSDetaineesInFlorida.pdf>

⁹ "Cries for Help: Medical Care at Krome Service Processing Center and in Florida's County Jails." Florida Immigrant Advocacy Center; December 1999. <http://www.aijustice.org/docs/reports/CriesForHelp.pdf>

¹⁰ Cheryl Little and Joan Friedland. "Florida County Jails: INS's Secret Detention World." Florida Immigrant Advocacy Center; November 1997. <http://www.aijustice.org/docs/reports/FloridaCountyJailReport.pdf>

¹¹ The Children's Trust is a dedicated source of revenue established by voter referendum to improve the lives of the children and families in Miami-Dade County. www.thechildrenstrust.org

¹² ICLASP partners include: AI Justice; Florida International University College of Law Clinical Legal Education Program; Florida Legal Services; Sisters of the Humility of Mary Service Program; The Trauma Resolution Service; University of Miami School of Education, Dunspaugh-Dalton Community and Educational Well-Being Research Center; and the University of Miami School of Law Youth Law Clinic.

¹³ Maureen Dunn, Director of Unaccompanied Children's Services, Office of Refugee Resettlement, Letter to The Children's Trust. May 2009. No date on letter but we had letter in August 2009

¹⁴ See Cg, Newhouse al-Sahli, Kleiser and Little, 'I Running Out of Hopely...': Profiles of Children in INS Detention in Florida. FIAC, October 2002. <http://www.fiacfla.org/fiacpublications.php#22>; Cheryl Little, Susana Barciela, Charu Newhouse al-Sahli, Dying for Decent Care: Bad Medicine in Immigration Custody. FIAC, Feb. 2009. Pages 30-31 and 38. <http://www.fiacfla.org/reports/DyingForDecentCare.pdf>

¹⁵ Olga Byrne, Unaccompanied Children in the United States: A Literature Review. Vera Institute of Justice, April 2008.

¹⁶ J.E.F.M. v. Holder, No. 14- 01026(WD WA 2014). The complaint and motion for class action certification was filed on July 9, 2014. On July 31, 2014 a Motion for Preliminary Injunction was filed seeking to enjoin the government from denying six of the eight named plaintiffs continuances in their immigration proceedings absent legal representation. On August 22, 2014 this pending motion will be heard and the Motion for Class Certification will be scheduled soon thereafter.

¹⁷ ICLASP partners include: AI Justice; Florida International University College of Law Clinical Legal Education Program; Florida Legal Services; Sisters of the Humility of Mary Service Program; The Trauma Resolution Service; University of Miami School of Education, Dunspaugh-Dalton Community and Educational Well-Being Research Center; and the University of Miami School of Law Youth Law Clinic

¹⁸ Florida has received the fourth largest number of children (3809), just behind California at 3909.

¹⁹ "Children on The Run, Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." A Study Conducted by the United Nations High Commissioner for Refugees Regional Office for the United States and the Caribbean, Washington, D.C., March 2014. <http://www.unhcrwashington.org/children/reports>

²⁰ Assessment by Refugee and Immigration Center for Education and Legal Services (RAICES). See e.g., "Texas Group Finds Most Unaccompanied Children Could Qualify for Relief," American Immigration Council, July 25, 2014.

²¹ Diego Quezada. "Children Fleeing Central American Violence Need Access to Lawyers." Center for American Progress, August 7, 2014. <http://www.americanprogress.org/issues/immigration/news/2014/08/07/95290/children-fleeing-central-american-violence-need-access-to-lawyers/>

²² Letter from National Association of Immigration Judges to John Boehner, Speaker U.S. House of Representatives and Nancy Pelosi, Democratic Leader U.S. House of Representatives, July 22, 2014.

²³ The Miami Court covers children living in Miami-Dade, Broward, Palm Beach, Lee, Collier, Monroe and Martin Counties.

²⁴ AI Justice, Catholic Legal Services and the Cuban American Bar Association, with help from American Immigration Lawyers Association (AILA) are working to cover the children's dockets.

²⁵ Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States. American Bar Association, August 2004. Page 3.

²⁶ Olga Byrne, Unaccompanied Children in the United States: A Literature Review. Vera Institute of Justice, April 2008. Pages 12-14. <http://www.vera.org/download?file=1775/UAC%2Bliterature%2Breview%2BFINAL.pdf>

²⁷ Frances Robles, "Fleeing Gangs, Children Head to U.S. Border," The New York Times, July 10, 2014.

²⁸ A news story about Oscar's case aired on ABC national news on April 25, 2013. https://www.youtube.com/watch?v=yKUXP-KYk_9s

²⁹ Michael Scherer, "Flight of the Children," Time Magazine, June 30, 2014.

³⁰ Frances Robles, "Fleeing Gangs, Children Head to U.S. Border," The New York Times, July 10, 2014.

³¹ Dan Restrepo and Ann Garcia, "The Surge of Unaccompanied Children from Central America," Center for American Progress, July 24, 2014.

³² Id.

³³ Id.

³⁴ Of the 57,000 unaccompanied children who were apprehended at the South West border between October 1, 2013-June 30, 2014, 29% were from Honduras, 24% for Guatemala, 23% from El Salvador and 22% from Mexico. U.S. Customs and Border Patrol, "Southwest Border Unaccompanied Alien Children." July 14, 2014.

³⁵ Jens Manuel Krogstad, Ana Gonzalez-Barrera and Mark Hugo, "Children 12 and under are fastest growing group of unaccompanied minors at U.S. border," Pew Research Center, July 22, 2014. See also "What happens when unaccompanied children arrive at U.S. border," Women's Refugee Commission, June 2014.

³⁶ Dan Restrepo and Ann Garcia, "The Surge of Unaccompanied Children from Central America," Center for American Progress, July 24, 2014.

³⁷ Recent efforts on several fronts are eroding the right of bona fide refugees to due process. Border Patrol officers, Congress, the Board of Immigration Appeals and the USCIS Asylum Division have all undertaken measures, including a far more restrictive standard for credible fear determinations, that undermine our country's longstanding obligations under domestic and international law to protect those in legitimate fear of return.

³⁸ Matter of D-J, 23 I&N Dec. 572 (A.G. 2003) AI Justice represented David Joseph, the Haitian asylum seeker whose case the Attorney General decided after the Board of Immigration Appeals ruled in his favor and said there was no reason to keep this 18 year old in detention.

³⁹ One of the most well publicized travesties of the government's post 9/11 Haitian detention policy is the case of David Joseph, an 18 year old who became so ensnared in the system that he spent more than two years in detention after landing on the shores of Key Biscayne before he was deported. An attorney from AI Justice represented David in his bond proceedings and an immigration judge concluded that David was neither a flight risk nor a danger to the community and granted him release on bond. The government, however, invoked the new post 9/11 regulation. AI Justice filed a brief with the Board of Immigration Appeals and on March 13, 2003 the BIA affirmed the judge's decision, calling into question the legitimacy of the detention policy applied to virtually all Haitians who had arrived on the October 2002 boat.

Following the BIA decision, Asa Hutchinson, Under Secretary for Border and Transportation Security in Homeland Security, wrote the Attorney General encouraging him to issue a directive denying David Joseph and all similarly situated Haitians release from detention and in a lengthy directive the Attorney General did just that.

⁴⁰ Ruth Ellen Wasem and Karma Ester, "Temporary Protected Status: Current Immigration Policy and Issues." CSR Report, RS 20844, December 13, 2011.

⁴¹ "Children on The Run, Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection." A Study Conducted by the United Nations High Commissioner for Refugees Regional Office for the United States and the Caribbean, Washington, D.C., March 2014. <http://www.unhcrwashington.org/children/reports>

⁴² Id.

⁴³ In 2012 356,873 immigrants, including children, were apprehended at the border, compared with 1.6 million in 2000. Eric Lipton and Julia Preston, "As U.S. plugs Border in Arizona, Crossings Shift to South Texas," The New York Times, June 16, 2013.

⁴⁴ In FY 2013, 27,884 unaccompanied minors were apprehended at the Southwest border. U.S. Department of Homeland Security, "Southwest Border Unaccompanied Alien Children," available at <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

⁴⁵ Lisa Raffonelli, Office of Refugee Resettlement spokesperson.

⁴⁶ These children receive a cursory screening by Border Patrol officers while in the "hieleras" and those who do not convince officers they have a "credible fear" of return are quickly removed.

⁴⁷ "Crisis on the Border is Scrambling the Politics of Immigration" <http://www.vnews.com/news/nation/world/12739434-95/crisis-on-the-border-is-scrambling-the-politics-of-immigration>

⁴⁸ Summer Harlow, Concerns raised over kids trying to get to U.S. The Miami Herald, June 10, 2009.

⁴⁹ Frances Robles, "Swindlers Target Kin of Migrants," The New York Times, July 23, 2014.

⁵⁰ Julia Huemer, Niranjana S Karnik, Sabine Voelkl-Kernstock, Elisabeth Granditsch, Kanita Dervic, Max H Friedrich, and Hans Steiner. Mental Health Issues in Unaccompanied Refugee Minor. Child and Adolescent Psychiatry and Mental Health, April 2, 2009. <http://www.capmh.com/content/3/1/13>.

⁵¹ News Release, Americans for Immigrant Justice (AI Justice), Border Patrol Continues to Abuse Immigrant Women (May 29, 2013)(on file with AI Justice).

⁵² The complaint is available on AI Justice website. *Americans for Immigrant Justice v. Customs and Border Protection*, Civ. Action No. 1:14-cv-20945 as well as a brief AI Justice 2013 report, “The Hieleras”: A Report on Human and Civil Rights Abuses Committed by U.S. Customs and Border Protection Agency,” August 2013.

⁵³ Rachael Bale, “Detained border crossers may find themselves sent to “the freezers,” The Center for Investigative Reporting, November 14, 2013.

⁵⁴ The internal affairs division of USCBP “is being investigated for falsifying documents, intentionally misplacing employee complaints and bungling misconduct reports as part of a cover-up to mask its failure to curb employee wrongdoing.” Marisa Taylor and Franco Ordonez, “Border agency’s watchdog under cover-up investigation,” McClatchy Washington Bureau, June 20, 2014.

⁵⁵ The administrative complaint was filed by the National Immigrant Justice Center (NIJC), the ACLU Border Litigation Project, Americans for Immigrant Justice (AI Justice), Esperanza Immigrant Rights Project (Esperanza), and the Florence Immigrant and Refugee Rights Project (Florence Project).

⁵⁶ The Office of Inspector General was unable to substantiate 16 of these claims. The remaining 100 complaints are still being investigated. Memorandum to the Honorable Jeh C. Johnson, DHS Secretary, from Inspector General John Roth, August 28, 2014.

⁵⁷ On June 13, 2013 Senator Boxer (D-CA) added amendment #1260 to the immigration overhaul package (S.744: Border Security, Economic Opportunity, and Immigration Modernization Act), calling for a cap on the number of persons held in CBP holding stations and ensuring more humane conditions. It was ultimately stripped from the Senate version, which was passed on June 27, 2013 and Representative Lucille Roybal Allard (D-CA) included similar language in a bill introduced on September 18, 2013, the Protect Family Values at the Border Act. The bill was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security on September 18, 2013. It will be considered before possibly being sent on to the house as a whole.

⁵⁸ Susan Carroll, “Undocumented Children in federal detention face abuse,” Houston Chronicle, May 24, 2014.

⁵⁹ Prior to March 2003, unaccompanied immigrant children were detained in the custody of the legacy Immigration and Naturalization Service (INS). The arrangement was plagued by an inherent conflict between the INS’s enforcement role and the legal requirement that it treat these children with “dignity, respect, and special concern for their vulnerability” under the landmark 1996 Flores settlement agreement, which requires unaccompanied children to be placed in the least restrictive setting and sets other minimum standards for their treatment.

⁶⁰ If a child was previously issued a final removal order or has a criminal record, the 72 hour period is waived and the child can be placed in expedited removal under ORR’s care, but ORR cannot release them.

⁶¹ “Children in Danger,” American Immigration Council Special Report, July 2014.

⁶² HHS engages with state officials to address concerns they may have about the care or impact of unaccompanied children in their states, while making sure the children are treated humanely and consistent with the law as they go through immigration court proceedings that will determine whether they will be removed and repatriated, or qualify for some form of relief. <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>

⁶³ Sylvia M. Burwell, Secretary U.S. Department of Health and Human Services (HHS), Testimony, July 10, 2014. www.hhs.gov/asl/testify/2014/07/t20140710b.html

⁶⁴ AI Justice has filed nine Federal Tort Claims on behalf of clients detained in CBP hieleras in the past two years. Detainees must wait six months after filing these claims, before taking their case to federal court. AI Justice, along with the law firm Kurzban Kurzban Weinger Tetzeli & Pratt P.A., have taken one of these cases to federal court in New York.

⁶⁵ “A Treacherous Journey: Child Migrants Navigating the US Immigration System” KIND, February 2014.

⁶⁶ “New Data on Unaccompanied Children in Immigration Court” July 15, 2014 <http://trac.syr.edu/immigration/reports/359/>

⁶⁷ Determining which county or city falls under which jurisdiction is often difficult to assess in cases where the child moves to a county or city not too far away from where they were living and this information is not listed anywhere, including online, by the Executive Office of Immigration Review (EOIR).

- ⁶⁸ Questions and Answers: USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum, USCIS. March 25, 2009. Page 1. <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb-95919f35e66f614176543f6d1a/?vgnextoid=b3b6040faa930210VgnVCM1000004718190aRCRD&vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD>
- ⁶⁹ J.E.F.M. v. Holder, No. 14-01026 (WD WA 2014)
- ⁷⁰ For more details, see TRAC “Taking Attendance: New Data Find Majority of Children appear in Immigration Court,” July 2014.
- ⁷¹ Lee, Govindaiah, Morrison & Thronson, Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act, 3-4.
- ⁷² 2005 Yearbook of Immigration Statistics, DHD Office of Immigration Statistics. August 2008. Page 22. http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2008/ois_yb_2008.pdf
- ⁷³ Elena Kagan, Solicitor General, U.S. Department of Justice, Silvia Eulalia Gonzalez-Mira et al v. Eric Holder, Jr. No 09A61. Letter to Honorable William K.Suter, Clerk, Supreme Court of the United States, July 23, 2009. <http://lawprofessors.typepad.com/files/matter-of-seg---bia-order-reopening1.pdf>
- ⁷⁴ Lee, Govindaiah, Morrison & Thronson, Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act, 3-4.
- ⁷⁵ Byrne, Unaccompanied Children in the United States: A Literature Review, 33.
- ⁷⁶ Questions and Answers, USCIS Initiative, Procedure for Unaccompanied Children
- ⁷⁷ “A Treacherous Journey: Child Migrants Navigating the US Immigration System” KIND, February 2014.
- ⁷⁸ Also under discussion is whether children would need to have at least one U.S. relative in order to qualify for relief.
- ⁷⁹ Frances Robles and Michael D. Shear, “U.S. Considering Refugee Status from Honduras,” The New York Times, July 25, 2014.
- ⁸⁰ Immigration and Nationality Act 8U.S.C.S1101 (a42).
- ⁸¹ See Immigration Nationality Act. Section 207 (d) and (e).
- ⁸² See <http://www.mccain.senate.gov/public/index.cfm/press-releases?ID=f59d42aa-6a5b-4312-99df-06ad-92039ca9>
- ⁸³ William Wilberforce, “Trafficking Victims Protection Reauthorization Act of 2008.”
- ⁸⁴ Amy Thompson, “A Child Alone and Without Papers,” Center for Public Policy Priorities, September 2008
- ⁸⁵ This is a grave concern given international and U.S. child welfare ideals based on protecting the “best interests” of vulnerable children.
- ⁸⁶ Kennedy, 2014. Research in El Salvador by Fulbright scholar Elizabeth Kennedy indicates that violence is even among those who cite poverty or family reunification as reasons for fleeing.
- ⁸⁷ Michael D. Shear, “Central American Leaders to meet Obama on Migrants,” The New York Times, July 19, 2014.
- ⁸⁸ Honduran President Orlando Hernandez, as reported in the New York Times, July 26, 2014.
- ⁸⁹ Dan Restrepo and Ann Garcia, “The Surge of Unaccompanied Children from Central America,” Center for American Progress, July 24, 2014.
- ⁹⁰ Sonia Perez D., “U.S. –bound boy buried in hometown,” Associated Press/Miami Herald, July 12, 2014. <http://www.miamiherald.com/2014/07/12/4232419/migrant-boy-buried-in-guatemala.html>
- ⁹¹ The annual Border Patrol budget is about \$3.5 billion. U.S. Border Patrol. “U.S. Border Patrol Fiscal Year Staffing statistics,” January 27, 2014.
- ⁹² CBP resources at the border have increased significantly since President Obama took office. In FY 2013 there were over 18,000 border patrol agents on the Southwest border. Molly Hennessy-Fiske, “The Texas border, patrol chief sees younger faces.” L.A. Times, June 27, 2014.
- ⁹³ See <http://www.politico.com/story/2014/07/barack-obama-congress-child-migrants-108657.html>
- ⁹⁴ See <http://www.reuters.com/article/2014/08/02/us-usa-immigration-house-idUSKBN0G14GL20140802>
- ⁹⁵ Alicia Caldwell, “Flood of children at border slows for now,” Associated Press/the Miami Herald, July 19, 2014.
- ⁹⁶ In just 6 months over 100,000 Cubans had made the journey to Florida.
- ⁹⁷ For additional recommendations, see “Children in Danger,” American Immigration Council, July 2014 and Musaffar Chishti and Faye Hipsman. “Dramatic Surge in Arrival of Unaccompanied Children Has Deep Roots and No Simple Solutions,” Migration Policy Institute, June 13, 2014.
- ⁹⁸ Child Rights Information Center (2008). Convention on The Rights of the Child.

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