



UNITED STATES MISSION  
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

October 14, 2015

Ms. Dina Rossbacher  
Secretariat of the Human Rights Council Advisory Committee  
Office of the United Nations High Commissioner for Human Rights  
Geneva, Switzerland

Dear Ms. Rossbacher:

Thank you for the questionnaire. The U.S. government strives to ensure that the human rights of all unaccompanied migrant children in our territory are protected. We wish to refer you to two extensive responses we have recently provided on this issue to a group of Special Rapporteurs and to the chairperson of the Committee on the Rights of the Child.

Sincerely,

Keith M. Harper  
Ambassador  
U.S. Representative to the United  
Nations Human Rights Council

Enclosures (2)

**OHCHR REGISTRY**

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Recipients: HRCAC.....  
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*Below is our response (Nov. 2014) to a letter from the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the sale of children, child prostitution, and child pornography; the Special Rapporteur on trafficking in persons, especially women and children; and the Special Rapporteur on violence against women, its causes, and consequences regarding information received concerning unaccompanied children in the United States and seeking additional information from the United States government.*

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

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

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

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

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

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

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

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

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

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

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

Unaccompanied children in HHS custody are given information on their legal rights and are provided legal screenings and legal representation in certain cases. They also are provided access to legal counsel to the greatest extent practicable. Custodians of unaccompanied children receive legal orientation trainings provided through the Department of Justice's Legal Orientation Program (LOP) and administered by the Executive Office for Immigration Review (EOIR). Providers of a legal orientation program for custodians of unaccompanied children (LOPC) offer general group orientations, individual orientations, self-help workshops, and

assistance with pro bono referrals. Additionally, LOPC providers are able to assist with school enrollment and make referrals to providers of social services to help ensure the well-being of the child. EOIR issues guidance to LOPC providers designed to assist them in identifying victims of mistreatment, exploitation, and trafficking; protecting the victims from further harm; and connecting the victims to needed social services.

DOJ and the Corporation for National and Community Service (CNCS), which administers AmeriCorps national service programs, have awarded \$1.8 million in grants to increase the effective and efficient adjudication of immigration proceedings involving certain children who have crossed the U.S. border without a parent or legal guardian and whose parent or legal guardian is not in the United States or is in the United States but unavailable to provide care and physical custody. The grants will be disbursed through "justice AmeriCorps" and will enable legal aid organizations to enroll approximately 100 lawyers and paralegals to represent children in immigration proceedings. The "justice AmeriCorps" members will also help to identify children who have been victims of human trafficking or abuse and, as appropriate, refer them to support services and authorities responsible for investigating and prosecuting the perpetrators of such crimes. In addition, DOJ will be providing limited funding through EOIR for other direct representation initiatives for children.

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

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

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

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

In addition, DOS has partnered with the International Organization for Migration (IOM) to implement programs that build the capacity of Central American governments to identify, screen, protect, and refer unaccompanied child migrants to appropriate services. And through its partnership with IOM, United States Agency for International Development (USAID) is

working with government officials, civil society organizations, and other partners in Honduras, Guatemala, and El Salvador, to provide immediate care, child protection services, and onward assistance for returning families and unaccompanied children.

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

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

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

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

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

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

The U.S. government makes individualized determinations as to whether each unaccompanied child is eligible for protection. Upon apprehension, DHS screens all unaccompanied children to

determine protection concerns, including to identify victims of human trafficking as required by the Trafficking Victims Protection Reauthorization Act of 2008 and to determine whether the child has fear of persecution upon return to the home country.

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

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

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

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

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

As discussed above, although relevant laws and regulations do not require immediate screening of unaccompanied children from noncontiguous countries, DHS, as a matter of policy, screens all unaccompanied children at a land border or port of entry to determine if they have been victims of human trafficking, are at risk of being trafficked upon return, or have a fear of persecution if

they return to their home country. Unaccompanied children may also apply to DHS and DOJ for immigration relief that would permit them to remain in the United States, including asylum for those who have a well-founded fear of persecution in their country of nationality.

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

*Below is the text from the U.S. response (November 2015) to a letter from Kirsten Sandberg, chairperson for the committee on the Rights of the Child who expressed concerns about migrant children.*

On behalf of Secretary of State John Kerry, I am writing in response to your November 12 letter regarding child migrants. We appreciate the concerns you have raised and share your belief that unaccompanied migrant children are a vulnerable population that must be protected. The U.S. government draws from a wide range of available resources to safely process unaccompanied migrant children, in accordance with applicable laws. As a courtesy, we are happy to provide you with the following information to address your concerns, and will endeavor to address related issues in our upcoming periodic report under the Convention on the Rights of the Child Optional Protocols to the extent they relate to our treaty obligations.

Upon encountering unaccompanied children at the border, U.S. Department of Homeland Security (DHS) Customs and Border Protection (CBP) officers provide them information on their rights, conduct a basic health screening, and provide them with basic necessities such as initial shelter and emergency medical care. DHS also screens such unaccompanied children for persecution or trafficking concerns.

For an unaccompanied child to withdraw his or her application for admission and return voluntarily, the child must be a national or habitual resident of a contiguous country (i.e., Canada or Mexico), and CBP must determine that the child meets three criteria: the child (1) does not fear returning due to a credible fear of persecution; (2) is not a victim of trafficking or at risk of being trafficked upon return; and (3) is able to make an independent decision to withdraw his or her application for admission. Many unaccompanied children from Mexico who are encountered by CBP officers at the border voluntarily withdraw their applications for admission and are returned directly to their country.

During the limited time unaccompanied children are in DHS care, they are separated from the general adult population to minimize any potential for coercion or abuse. DHS is committed to ensuring that all individuals in its custody are treated in a safe, dignified, and secure manner. DHS has a zero-tolerance policy for all forms of abuse or assault. All accusations of unlawful conduct are investigated thoroughly and appropriate action is taken whenever a claim is substantiated. DHS's independent Office of the Inspector General (OIG) conducts unannounced, random site visits of CBP holding facilities as well as interviews with unaccompanied children. In a recent report covering field visits in July, the Inspector General did not observe misconduct by DHS employees. The OIG did observe some concerns about shelter conditions, and provided recommendations to address these concerns, which are being addressed by the DHS. The full report can be found on the Inspector General's website, <http://www.oig.dhs.gov>.

Unaccompanied children from contiguous countries who are determined not to meet any of the aforementioned criteria (e.g., are at risk of trafficking, or fear persecution upon return), as well as unaccompanied children from noncontiguous countries, are transferred to the care and custody of the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR), within 72 hours of determining that the child is unaccompanied, absent exceptional circumstances, as required by U.S. law. HHS conducts a complete medical exam and provides them with medical care, including dental care, opportunities for extracurricular activities, counseling, and access to educational



programs. Children are also screened again to determine if they are victims of abuse, crime, or human trafficking, or if there are any immediate mental health needs that require special services. Children are given regular telephone access to speak with family members or their consulates on a routine basis while in HHS custody. ORR then seeks to release the child to sponsors in the United States, including family members. The majority of these children are released within 30 days to the sponsorship of a parent or close family member in the United States.

HHS takes very seriously allegations of physical, sexual, and verbal abuse of children in HHS care and custody. HHS published in December 2014 a rule setting forth national standards to prevent, detect, and respond to sexual abuse and sexual harassment in HHS facilities. This rule includes a comprehensive set of standards that include topics such as prevention planning, training and educating, reporting, health care, and data collection. Furthermore, all permanent HHS facilities are licensed by the state in which the facility is located and are overseen by the licensing authority for everything from staffing ratios to the size of the space a child must be provided in a bedroom. HHS makes it a priority to provide all children in its care a safe and healthy environment.

The U.S. government helps facilitate access to legal representation for unaccompanied children who will be subject to immigration removal proceedings. For instance, unaccompanied children in HHS custody are given information on their legal rights and possible legal representation, and are provided individualized legal screenings. In addition, HHS provided \$9 million in grants to nonprofit organizations to hire attorneys to provide immigration representation. Furthermore, HHS is authorized to appoint independent child advocates for trafficking victims and other especially vulnerable unaccompanied children to promote the best interests of the child. A child may be eligible for various forms of immigration relief, including, but not limited to, asylum, Special Immigrant Juvenile Status (for children who have been abused, abandoned, or neglected and meet other qualifying criteria), U visa status for victims of certain crimes, and T visa status for victims of human trafficking. The Department of Justice has provided funding through the Corporation for National and Community Service's "Justice AmeriCorps" grants program to enable legal services organizations to enroll lawyers and paralegals to represent and assist unaccompanied children in immigration removal proceedings. Custodians of unaccompanied children may receive a variety of voluntary legal orientation trainings, assistance with pro bono referrals, and referrals to providers of social services.

The United States is committed to working closely with other governments to address the complex underlying factors that impact irregular migration from Central America. Representatives from the Department of State and DHS participate in the Regional Conference on Migration, a consensus-based conference of regional states that allows for technical discussions of regional migration issues. The Department of State also partners with the International Organization for Migration (IOM) to implement programs that build the capacity of Central American governments to identify, screen, protect, and refer unaccompanied child migrants to appropriate services, and supports the Office of the UN High Commissioner for Refugees in Central America and Mexico to strengthen asylum systems and to track and address forced displacement due to criminal violence. Through its partnership with IOM, the United States Agency for International Development is working with government officials, civil society

organizations, and other partners in Honduras, Guatemala, and El Salvador to provide immediate care, child protection services, and onward assistance for returning families and unaccompanied children. The United States has also launched a program to provide refugee admission to certain children in El Salvador, Honduras, and Guatemala, providing a safe, orderly alternative to the dangerous journey many migrant children have taken north from Central America.

Although the United States is not a party to the UN Convention on the Rights of the Child, the United States has signed the treaty and has laws at the state and federal level that support the treaty's overall goal of protecting the well-being of children. We continue to promote the rights and well-being of children in the United States through vigorous enforcement of laws at the federal, state, and local level. The United States also sends senior delegations to appear before the UN Committee on the Rights of the Child to present our periodic reports on U.S. implementation of the two Optional Protocols to which the United States is a party.

Thank you for reaching out to us regarding your concerns on child migrants. We assure you that we continue to strive for the advancement of migrant children's rights.