



Invited Testimony Regarding Joint Charge # 2 to the Joint Texas House Committees on Judiciary & Civil Jurisprudence and Juvenile Justice & Family Issues

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Chairman Leach, Chairwoman Neave, and honorable Members of the Texas House Committees on Judiciary and Civil Jurisprudence and Juvenile Justice and Family Issues, thank you for the opportunity to testify today. My name is Esther Reyes and I am the Director of Immigration Policy and Advocacy for the Children's Defense Fund - Texas. We are a nonprofit children's advocacy organization that believes no child is expendable and that advocates for the right of all children and their families - regardless of immigration status – to be safe and healthy.

Before addressing the charge today, we thought it would be helpful to begin first with some information about who unaccompanied children (UC) are, where they come from, why they come, as well as what the experience, on average, is like for unaccompanied children entering our country.

Children and families seek protection in the United States because their lives depend on it. According to a Congressional Review Service report,¹ the major factors driving UC to flee to the U.S. are high rates of violent crime, gang violence, and recruitment, and severe economic insecurity. And there is no evidence² that transnational gangs purposely send their members to the U.S. as UC. These children are far more likely to be fleeing violent gangs.

The love of a parent for their child is what many faith traditions have used to explain God, so it doesn't take a stretch of the imagination to imagine how horrific conditions must be back home for parents and families to trust their beloved children to an unknown journey, to an unknown country.

Most UC arriving at the U.S. border are coming from Guatemala, Honduras, and El Salvador. Seventy-two percent of children are ages 15-17, and 28% are 0-14 years old. In FY22 (October 2021-August 2022), 17,677 UC were released to sponsors living in Texas. Harris County has the highest number of UC at 7,698, and Dallas County has 3,169.

Under current law, any child under 18 apprehended by immigration authorities who does not have a parent/guardian available to care for them at the time of apprehension and who lacks lawful status in the U.S. will be designated as an "unaccompanied alien minor." I wanted to pause here to highlight an important point: In the current system, UC will encounter a complex process where they will engage with various government agencies -- each with their own missions, objectives, and policies -- but only one with a statutory mandate to identify and act on what is in the best interest of each child in its custody.

The first of the three main federal agencies responsible for decisions about UC is the Department of Homeland Security (DHS), who is tasked with determining whether a child will be designated as an unaccompanied minor. Unlike the Office of Refugee Resettlement (ORR), which has a statutory obligation—albeit limited in scope—to consider a child's best interests, other agencies who come into contact with unaccompanied minors, including DHS, have the discretion to consider a child's best interests, but no obligation to do so.

¹ Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration <https://sgp.fas.org/crs/homesec/R43628.pdf>

² Strengthening Services for Unaccompanied Children in U.S. Communities https://www.migrationpolicy.org/sites/default/files/publications/mpi-unaccompanied-children-services_final.pdf



Here's a hypothetical example of what this discretion often looks like: Alicia, a child from Central America who arrives at the southern border of the U.S., is asked by a Customs and Border Protection official if the adult she is with is a parent. Alicia answers that she is her grandmother. This answer leads to the immediate separation from her grandmother, who is not Alicia's parent or legal guardian, even if Alicia grew up with her grandmother and staying with her is in Alicia's best interest. Alicia is then designated an unaccompanied minor. This insufficiently flexible statute frequently separates children from the most protective adult figure in their lives.

Research shows³ that separating a child from their primary caretaker under extreme conditions of stress exacerbates the trauma on children. Trauma and toxic stress have immediate and long-term impacts on children, altering their brain structure and functioning, and putting them at greater risk for a number of health and psychological impairments. Ongoing contact with primary caregivers in times of stress, however, can protect against these risks. Research also shows that child-family separations across infancy, childhood, and adolescence can lead to adverse outcomes across the lifespan.

Once a child is designated as "unaccompanied," immigration authorities have 72 hours to transfer them to the care and custody of the U.S. Department of Health and Human Services (HHS) while children await immigration proceedings. This work is done by ORR, within HHS, who is tasked with placing UC in the least restrictive setting that is in the best interests of the child. ORR contracts with NGOs and private providers to run centers around the country. The average length of care for children in FY21 was 37 days.

State licensing supports child-appropriate and specialized care for UC by setting standards of care and providing regular monitoring to ensure that these centers comply with those standards. In Texas, ORR facilities have been operating without licenses and state oversight since August 2021 following an executive order issued by Governor Greg Abbott.

No state funding—not even for state oversight—is used for any of the unaccompanied children's program, which is a federally-funded program operated by ORR and HHS. It is only once children are released to sponsors in the community that some state resources may be used. Generally, unaccompanied children without status do not qualify for public benefits or health coverage.

The third federal agency that UC encounter is the Department of Justice, which operates immigration courts. UC have no lawful immigration status in the U.S., and immigration judges decide whether a child has presented a defense to being deported. From the physical spaces to the rules of procedure, immigration courts are the same for adults and children. Throughout this process, UC are not guaranteed access to legal counsel and are often expected to represent themselves. The majority of children forced to represent themselves are deported.

When parents and families send their children on this treacherous journey, it is an act of faith and hope. That their children will have the safety and freedom they do not have in their home countries. Instead, these children, their families' greatest love and hope, are met with a complex and adversarial system that sees them as a threat instead of the seeds of hope for a brighter future they represent. **When children seek protection, they deserve a chance to find it.** They deserve a chance to recover from violence and fear. They deserve a chance at health, education, and protection from harm. Children deserve a chance to thrive. Because no child is expendable.

³ The Science is Clear: Separating Families has Long-term Damaging Psychological and Health Consequences for Children, Families, and Communities <https://www.srcd.org/briefs-fact-sheets/the-science-is-clear>