



Statement to the House Judiciary Committee June 25, 2014

Children Fleeing Violence from Central America, In This Humanitarian Crisis, Have Legal Rights and Claims to Protection Under U.S. Humanitarian Laws

Recruiting, Training, and Mentoring Pro Bono Counsel to Represent Children

The Safe Passage Project at New York Law School works with volunteer attorneys and law students to provide *pro bono* legal representation of unaccompanied children in immigration proceedings. Since August 2012, we have volunteered at the New York Executive Office for Immigration Review (Immigration Court) and screened children as they arrive for removal hearings. As a June 17, 2014 *New York Times* [article](#) accurately stated, we screen approximately thirty children in immigration court each month, and after evaluating the possible avenues of immigration relief for the children, we then help to find them *pro bono* lawyers. We also provide training, resources, and mentoring to our volunteer attorneys. Since the Central American humanitarian crisis, our work has been more important than ever, as we encounter more and more children fleeing violence alone. Many are survivors of physical, sexual, and emotional abuse.

Preserve and Strengthen Humanitarian Law Protecting Children

We urge the House of Representatives to defend the U.S. humanitarian laws that have long protected vulnerable children fleeing violence. These laws represent the best of American ideals of compassion, justice, and human rights in humanitarian crises like these.

These children are eligible to exercise rights under both U.S. domestic law and international human rights law. The legal and moral obligation not to return refugees back into violence is a long-standing protection in U.S. asylum law. In addition, Congress offers protection for children fleeing abuse, abandonment, and neglect suffered at the hands of one or both parents and for whom it is not safe to return to their countries of origin.

These young people have a right to apply for protection under our existing laws. Not every child may qualify for protection or have a right to remain in the U.S., but every person, especially a child, deserves the opportunity to be heard. We, and other *pro bono* attorneys across the country, have been donating our time to help counsel these children about legal protections, and help immigration authorities fairly examine their claims.

Expedited Removal Must Not Be Extended to the Inspection and Removal of Children

Moreover, the United States cannot—and should not—summarily remove children. In a June 24th letter, Representative Goodlatte suggests that the government might use a procedure known as “expedited removal” to reject the children at the border. This is inappropriate. Rejecting children summarily would violate existing U.S. statutes and regulations, minimal due process protections, and international law. Both Republican and Democratic administrations have rightly understood that unaccompanied minors cannot possibly be interviewed by Customs and Border Patrol officers in a manner consistent with the statutory requirements of expedited removal. In the past, the bipartisan U.S. Commission on International Religious Freedom criticized expedited removal as insufficiently allowing persecuted adults to bring asylum claims. Their arguments apply even more so to vulnerable children.

Asylum Officer Resources Must Be Mobilized and Special Training Expanded for Interviews for Children

Under current law and regulations, unaccompanied minors, while undergoing immigration removal procedures, may file an application for asylum with the USCIS Asylum Office. This is an efficient and appropriate referral of cases that often requires children to relate difficult and traumatizing events. The Asylum Office trains its officers in appropriate techniques for conducting interviews with children. Representative Goodlatte’s June 24th letter implies that the Asylum Office procedure should be abandoned. We disagree. A greater expansion of resources to those within our Department of Homeland Security who are best trained and prepared for interviewing children will result in fairer and more efficient adjudication. The immigration courts are not forums prepared for the testimony of children, especially where children are unrepresented.

Counsel Improves the Removal System and Makes Children More Likely to Appear for Hearings


When children have trained and competent immigration counsel, they are much more likely to understand the nature of the immigration proceedings and be able to articulate viable legal claims. In our experience, once a child has counsel, it is very rare for that child not to return to immigration court as required by law. Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear to immigration court hearings after we were able to match them with *pro bono* counsel. In both cases, we learned through *pro bono* counsel that the children returned to their countries of origin.

As mentioned, Safe Passage screens children and helps secure *pro bono* representation. Our work is important because children are not appointed counsel in immigration court. Moreover, even experienced immigration lawyers may not be familiar with the overlapping areas of law necessary to secure immigration relief for children. In the past few years, we have trained hundreds of lawyers and advocates about immigration remedies for children. Safe Passage *pro bono* counsel have found that many children qualify for Asylum, Special Immigrant Juvenile Status, U and T non-immigrant status, protection under the Violence Against Women Act, Deferred Action for Childhood Arrivals, family-based preference petitions, or through prosecutorial discretion. Attorneys enable the children to understand the law and navigate the system. Attorneys also counsel and assist those children who wish to return home. But *pro bono* recruitment and training of attorneys is not enough to meet the needs of every child, especially those who are in detention or who live in areas of the country where projects similar to Safe Passage do not exist.

Therefore, we strongly support H.R. 4936, the VIVA Act (Vulnerable Immigrant Voice Act) of 2014, introduced by Rep. Jeffries and five other House Judiciary Committee members this week. The bill would provide appointed counsel to unaccompanied children in immigration proceedings. We are proud to dedicate our *pro bono* work to help protect these vulnerable children who are unable to defend themselves. Yet *pro bono* efforts are not nearly enough. No child should stand alone in immigration court.



Lenni B. Benson
Professor of Law
Director, Safe Passage Project
212-431-2336 (office)
917-596-3523(cell)



Claire R. Thomas
Adjunct Professor of Law
Staff Attorney, Safe Passage Project
212-431-2100 x4725(office)