

Responses to Questions for the Record

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Hearing on

Eroding the Law and Diverting Taxpayer Resources: An Examination of the Administration's Central American Minors Refugee/Parole Program

**Before the Subcommittee on Immigration and the National Interest of the Committee on the Judiciary
United States Senate**

Question for the Record from Senator Vitter:

- In your opinion, do the potential children under this program qualify as refugees that constitute a particular social group under the original language of the 1980 Refugee Act or any subsequent legislative clarification?

Response:

The refugee determinations are made on an individualized basis. As the Department of Homeland Security witness indicated at the hearing, the Department has not yet interviewed any applicants for refugee status under the Central American Minors Refugee/Parole Program (“the CAM Program”). Therefore, at the present time it is not possible to state definitively whether specific children who would apply for refugee status under the CAM Program could demonstrate membership in a particular social group under the Refugee Act of 1980.

As indicated in my testimony before this Subcommittee, however, there is a serious question whether these children could meet that requirement. Under current law, a refugee applicant must be a member of a group that shares a common, immutable characteristic; the group must be recognized within the society as a distinct group; and the group must be defined with sufficient particularity to ascertain the group's membership.

To date, no federal court has approved a social group defined solely by childhood; indeed, as my testimony indicated, at least one court of appeals has rejected such an argument. Federal courts also have rejected social groups comprised of young people resisting gang recruitment as not distinct or particular, and my written testimony lists such decisions. Finally, as stated in my testimony, courts have held that generalized violence is not sufficient to demonstrate persecution on account of a statutorily protected ground.

As stated in my testimony, I would encourage the Departments of State and Homeland Security to explain the basis on which the children applying under the CAM Program would be able to demonstrate the requisite membership in a particular social group under the Refugee Act of 1980. In creating a dedicated refugee program for these children, we must ensure that we can deliver on our commitment in compliance with the existing law.