



**Statement for the Record by Kids in Need of Defense (KIND**

**“Nomination of the Honorable William Pelham Barr**

**to be Attorney General of the United States”**

**Senate Judiciary Committee**

**January 16, 2019**

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with 585 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has received more than 17,000 child referrals since we opened our doors in 2009, and trained over 30,000 pro bono attorneys. KIND also helps children who are returning to their home countries through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with our local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also engages in broader work in the region to address root causes of child migration, such as sexual- and gender-based violence. Additionally, KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

The majority of KIND’s clients are fleeing grave violence and threats to their lives and come to the United States seeking protection. For KIND clients, removal hearings have very high stakes, including potential return to harm or death in their countries of origin. Young age, lack of familiarity with immigration law and courts, limited English proficiency, and past trauma create additional and often insurmountable barriers to obtaining life-saving humanitarian protection.

Procedural and substantive protections for unaccompanied children, including those provided in the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), are critical to ensuring children’s claims for humanitarian protection are fully and fairly considered. To this end, KIND believes that any nominee for Attorney General of the United States must firmly

commit to preserving due process protections for unaccompanied children that have been developed through bipartisan collaboration over the past 30 years.<sup>1</sup>

KIND is deeply concerned, however, that recent policy decisions by the Department of Justice are having the opposite effect and drastically restrict the ability of unaccompanied children to have their cases fairly and efficiently adjudicated. These policies have dramatically changed not only the procedures for processing unaccompanied children's cases but also the substantive protections available to these children. As a consequence, they risk the return of thousands of children to danger, harm, or death.

KIND describes here several policies that are currently frustrating access to justice for unaccompanied children and creating systemic inefficiencies in the judicial system. We urge the Committee to request assurances from any Attorney General nominee that these policies will be promptly reevaluated and that any future policies advanced during the nominee's tenure will reflect due regard for the needs of the most vulnerable in our immigration system.

## **I. Attacks on Due Process in Immigration Court Proceedings**

### ***A. Eroding child-sensitive practices in immigration courts***

Recognizing the unique vulnerabilities of children alone in our immigration system, for a decade the Department of Justice has maintained guidelines directing the use of child-friendly practices, such as child-sensitive questioning techniques, to improve the ability of children to attend and meaningfully participate in immigration proceedings that may determine their safety and futures. In December 2017, however, the Executive Office for Immigration Review (EOIR) issued a memorandum titled "Guidelines for Immigration Court Cases Involving Juveniles" replacing and fundamentally altering this critical guidance.<sup>2</sup>

The revised guidelines, while referencing the potentially complicated and sensitive nature of children's cases, undermine judges' discretion to consider children's best interests in creating child-appropriate courtroom environments and instead advance a decidedly suspicious tone toward claims by unaccompanied children. Despite instructing judges to impartially consider the cases of all who are before them, the guidelines direct judges to "be vigilant in adjudicating cases of a purported UAC," and state that there is "an incentive to misrepresent accompaniment status or age in order to attempt to qualify for the benefits associated with UAC status."<sup>3</sup>

The guidelines also dilute measures designed to address the unique developmental needs of children, including by removing language related to the use of telephone conferences and

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<sup>1</sup> See, e.g., Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135 (enacted Nov. 25, 2002); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044 (2008).

<sup>2</sup> Memorandum from MaryBeth Keller, Chief Immigration Judge, EOIR, Operating Policies and Procedures Memorandum 17-03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children, Dec. 20, 2017, <https://www.justice.gov/eoir/file/oppm17-03/download>.

<sup>3</sup> *Id.* at 7-8.

narrowing children’s opportunities to gain familiarity with hearing environments before they are required to deliver painful and difficult testimony in support of their legal claims. These changes run counter to the Trafficking Victims Protection Reauthorization Act (TVPRA), which was enacted in recognition of a “special obligation to ensure that these children are treated humanely and fairly.”<sup>4</sup> Indeed, the modified guidelines heighten the risk that children will have to present their claims in an intimidating or even hostile court setting, which could lead to their cases being inadequately considered and return to the dangers from which they fled in their countries of origin, despite their eligibility for legal protection.

***B. Re-determining the status of and protections available to unaccompanied children***

Federal law defines an “unaccompanied alien child” as a child under the age of 18 who has no lawful immigration status and for whom there is no parent or legal guardian in the United States, or no parent or legal guardian available to provide care and custody.<sup>5</sup> Determinations regarding whether a child meets this statutory definition are made by Customs and Border Protection officers at the time of a child’s apprehension. Historically, EOIR has deferred to DHS’ initial determinations. Yet in September 2017, EOIR’s General Counsel issued a memorandum to EOIR’s Acting Director advising that immigration judges are not legally bound by such determinations and may reevaluate for themselves whether a child meets the statutory definition of an “unaccompanied alien child.”<sup>6</sup> Attorney General Sessions articulated a similar expansion of EOIR’s role in unaccompanied children’s cases in his review of the BIA’s decision in *Matter of M-A-C-O-*, in which he held that immigration judges have initial jurisdiction over the asylum cases of unaccompanied children who turned 18 before filing their asylum applications.<sup>7</sup>

In addition to creating confusion for children, attorneys, and adjudicators, re-determinations of a child’s unaccompanied status expose children to more adversarial and less child-appropriate processes, and contravene the specific intent of Congress to ensure particularly vulnerable children can meaningfully access humanitarian protections that ensure they are not returned to harm.

The Homeland Security Act of 2002 (HSA) and TVPRA afford several procedural protections for unaccompanied children, including the right to have their asylum cases first heard in a non-adversarial setting before a trained asylum officer,<sup>8</sup> and exemption from the one-year filing deadline that generally applies to asylum applications.<sup>9</sup> These protections, like DHS’ initial determination of who meets the definition of an “unaccompanied alien child,” have been interpreted to attach for the duration of a child’s immigration proceedings, as children are still

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<sup>4</sup> 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008).

<sup>5</sup> 6 U.S.C. 279(g)(2).

<sup>6</sup> Memorandum from Jean King, General Counsel of Executive Office for Immigration Review, to James R. McHenry III, Acting Director of EOIR, Legal Opinion re: EOIR's Authority to Interpret the Term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA (Sept. 19, 2017), <https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf>.

<sup>7</sup> 27 I&N Dec. 477 (BIA 2018).

<sup>8</sup> 8 U.S.C. 1158(b)(3)(C); INA 208(b)(3)(C).

<sup>9</sup> INA 208(a)(2)(E).

required to attend and participate in their own complex immigration cases even after they turn 18 or are reunified with a parent.

The EOIR memo and Attorney General’s decision in *Matter of M-A-C-O* upend this understanding and inject additional instability and uncertainty into a process already fraught with challenges for child survivors of violence, abuse, and other trauma. Such redeterminations not only jeopardize the fair adjudication of children’s cases, but also compound the administrative demands on an already overburdened system. Applications for legal relief may be duplicated or transferred between different departments and agencies as redeterminations occur, creating additional paperwork and unnecessary delays. These results undermine, not enhance, the efficiency of our immigration courts and the faithful administration of our immigration laws.

### *C. Metrics and Quotas for Immigration Judges*

In March 2018, the Department of Justice announced new metrics for immigration judges<sup>10</sup> that risk the hurried and incomplete consideration of legal cases with life-or-death implications for unaccompanied children. The new metrics, which took effect October 1, 2018, factor the number of cases an immigration judge completes in a fiscal year into the judges’ annual performance review. For a “satisfactory” rating, a judge must complete 700 cases annually, or about 3 cases each day.

By linking individual judges’ job evaluations to the rapid completion of cases, the performance metrics act as a disincentive to scheduling accommodations that may be critical to unaccompanied children’s cases for legal protection. Forms of relief such as Special Immigrant Juvenile Status (SIJ) require children to appear before U.S. Citizenship and Immigration Services and state family courts. These proceedings, which occur in different fora and according to schedules beyond the control of unaccompanied children or EOIR, are imperative to accessing SIJ and other forms of humanitarian protection. If immigration judges decline to delay or postpone proceedings before EOIR to allow for the completion of these collateral proceedings, children may be denied protection, despite their eligibility.

By discouraging necessary delays of proceedings, the quotas will also frustrate the ability of children to secure legal counsel. As a result, judges will be required to devote additional time to explaining court procedures and facilitating children’s participation and preparation—roles frequently performed by attorneys. Contrary to EOIR’s assertions that the metrics will improve court efficiency, the metrics will likely have the opposite result. Further, case completion quotas may deter immigration judges from volunteering to administer juvenile dockets out of fear that it may affect their ability to meet the performance review standards.

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<sup>10</sup> Memorandum from EOIR Director to All of Judges, Immigration Judge Performance Metrics (March 30, 2018), available at [http://www.abajournal.com/images/main\\_images/from\\_Aссо\\_Press\\_-\\_03-30-2018\\_McHenry\\_-\\_IJ\\_Performance\\_Metrics\\_.pdf](http://www.abajournal.com/images/main_images/from_Aссо_Press_-_03-30-2018_McHenry_-_IJ_Performance_Metrics_.pdf). Earlier that year, EOIR also announced performance goals for immigration courts. See Memorandum from James R. McHenry III, Director, EOIR, Case Priorities and Immigration Court Performance Measures, Jan. 17, 2018, <https://www.justice.gov/eoir/page/file/1026721/download>.

#### ***D. Attorney General's Decisions Restricting Administrative Closure and Continuances***

In 2018, then-Attorney General Sessions issued several opinions reviewing decisions by the Board of Immigration Appeals (the Board). The Attorney General's opinions in two such cases-- *Matter of Castro-Tum* and *Matter of L-A-B-R*—hinder the ability of judges to manage their dockets to ensure the fairness of the proceedings before them, with particular consequences for unaccompanied children.

In *Matter of Castro-Tum*, Attorney General Sessions ruled that immigration judges and the Board do not have general authority to administratively close cases and instead have such authority only when “a previous regulation or settlement agreement has expressly conferred it.”<sup>11</sup> In *Matter of L-A-B-R*-, the Attorney General similarly restricted judges' use of continuances, allowing the use of that docket management tool “only for good cause shown.”<sup>12</sup> He stated that requests to delay proceedings to pursue collateral legal relief before other courts or agencies require a multi-factor analysis focused “on the likelihood that the collateral relief will be granted and will materially affect the outcome of the removal proceedings.”<sup>13</sup>

In practice, these decisions will require immigration judges to disregard children's eligibility for relief in other fora or to pre-judge the outcome of such proceedings, effectively usurping the jurisdiction of other courts and agencies on matters for which the immigration judge may have little or no expertise. In so doing, judges will not only deprive children of an opportunity to have their claims for relief fully and fairly considered, but will also violate express provisions of the TVPRA prescribing specific substantive and procedural protections for unaccompanied children, among them potential eligibility for Special Immigrant Juvenile Status<sup>14</sup> and the opportunity to have their asylum claims first considered by USCIS.<sup>15</sup>

Upon entering our immigration system, most unaccompanied children do not have an attorney to assist them. Without an understanding of complex immigration laws and procedures, such children may not know how to demonstrate that they qualify for various forms of legal protection affording relief from deportation. Docket management tools such as continuances and administrative closure enable judges to temporarily postpone hearings to afford children an opportunity to secure legal counsel who can assist in evaluating and preparing their cases. This flexibility is paramount for child survivors of violence, abuse, and neglect, who frequently require additional time to establish trust in professionals with whom they are working such that they can share the painful and traumatic experiences giving rise to their eligibility for legal protection. Access to counsel has a pronounced impact on the ability of children to obtain relief for which they qualify. Only 1 in 10 children who are unrepresented successfully obtain legal relief. Children with an attorney are five times more likely to receive protection.

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<sup>11</sup> 27 I&N Dec. 271, 283 (A.G. 2018).

<sup>12</sup> 27 I&N Dec. 405 (A.G. 2018).

<sup>13</sup> *Id.* at 406.

<sup>14</sup> INA 101(a)(27)(J), as modified by the TVPRA.

<sup>15</sup> 8 U.S.C. 1158(b)(3); INA208(b)(3).

Attorney General Sessions' decisions overlook the needs and realities of unaccompanied children in a system created for adults and deprive children of fair access to legal protection, despite their eligibility and desperate need for it. The active use of the Attorney General's authority to certify decisions for review—a power intended to ensure the fair administration and interpretation of our immigration laws—is being used instead to undermine basic protections for the most vulnerable.

### *E. Curtailing due process in asylum cases*

#### *1. Matter of E-F-H-L-*

In *Matter of E-F-H-L-*, a case certified for review by then-Attorney General Sessions, the Attorney General vacated the Board's prior ruling finding that individuals applying for asylum are entitled to an evidentiary merits hearing on their application.<sup>16</sup> The Attorney General's decision, issued years after that Board precedent, may result in immigration judges summarily rejecting asylum cases based on written applications alone, without oral testimony from the applicant.

In tandem with other policy measures drastically restricting access to asylum, this decision will impede due process in cases with the highest of stakes. Many applicants for asylum do not have attorneys to assist them in navigating complex immigration laws and must prepare their applications on their own, frequently in a language with which they have only limited familiarity. Consequently, their applications may insufficiently reflect the extent of the persecution they fear or experienced. Evidentiary hearings in immigration court allow asylum seekers to explain the facts and circumstances giving rise to their claims and to clarify any misunderstandings or confusion before the judge renders a decision.

## **II. Policies Restricting Access to Asylum and Other Humanitarian Protection**

While the Administration has sought to roll back numerous protections for unaccompanied children and others seeking humanitarian relief it has devoted particular attention to the procedures and standards related to asylum. This longstanding form of protection, which is enshrined in both U.S. and international law, ensures that those with a well-founded fear of persecution based on one of several enumerated grounds will not be returned to harm or danger in their country of origin.<sup>17</sup> Through both administrative rulemaking and the certification of decisions by the Attorney General, the Department of Justice has sought to narrow access to this lifesaving measure, among the most critical of our nation's moral and humanitarian obligations.

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<sup>16</sup> *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1040936/download>.

<sup>17</sup> See generally 1967 Protocol Relating to the Status of Refugees (to the 1951 Convention Relating to the Status of Refugees); INA section 208.

### A. *Matter of A-B*

In March 2018, Attorney General Sessions certified to himself *Matter of A-B*, a case in which the BIA had overturned an immigration judge's denial of asylum on the basis of severe domestic violence by the applicant's ex-husband. In his referral, the Attorney General invited the parties and others to submit briefs regarding "whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of an application for asylum or withholding of removal."<sup>18</sup>

The Attorney General's certification suggested some uncertainty regarding what is in fact well-settled precedent providing that asylum claims can be based on persecution by non-governmental actors when a government is unwilling or unable to protect its citizens from such persecution.<sup>19</sup> Three months later, the Attorney General issued his opinion in the case and held that [g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum.<sup>20</sup> The opinion set forth heightened requirements for asylum applicants in such cases, noted that few such cases would satisfy the "credible fear standard" in expedited removal, and overturned a critical precedent recognizing domestic violence as a basis for asylum.<sup>21</sup>

The Attorney General's opposition toward claims by victims of domestic and gang violence reflects the Administration's stated interest in reducing the number of asylum applications and deterring future migration. Yet these harsh policies fail to take into account the widespread and severe sexual- and gender-based violence and gang violence that is driving children to flee their homes and countries in search of safety. Indeed, these policies would condemn children to return to such conditions, at grave risk to their lives. Children like Yasmin, Nia, and Debra.\*<sup>22</sup>

- In El Salvador, Yasmin was only 13 years old when she was kidnapped by a local MS-13 gang leader. On the day she was taken, the gang leader permitted her to make what she thought would be her last phone call to her mother so she could say her good-byes – a phone call that she later learned had caused her mother to suffer a stroke. For the next year, Yasmin would be raped every night by the gang leader, who had claimed her to be "his woman." Although the gang leader was arrested and taken into police custody, he escaped and showed up 2 years later to "claim" Yasmin and to take her back to rape and treat as his property. Yasmin fled to the United States to find safety and, with the assistance of her attorney, won her asylum case.
- In Mexico, Nia was only 15 years old when she met her boyfriend, Jaime. Jaime took advantage of her young age and forced Nia to drop out of school and to move in with him and his family. Jaime then began to rape Nia and would beat her almost every single time

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<sup>18</sup> *Matter of A-B*, 27 I&N Dec. 316, 317 (A.G. 2018).

<sup>19</sup> *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987).

<sup>20</sup> *Matter of A-B*, at 320.

<sup>21</sup> *See Matter of A-R-C-G*, 26 I&N Dec. 388 (BIA 2014).

<sup>22</sup> The clients' names have been changed to protect their confidentiality and identities.

after raping her. Jaime’s family would, at times, participate in beating her and would withhold food and money from Nia. A month after Nia started living with Jaime, she found out she was pregnant with Debra. When Jaime found out about the pregnancy, he began starving Nia and threatening to kill her. After finally managing to escape Jaime, Nia fled with one-month old Debra to the United States, where an attorney assisted them in their asylum cases.

In December 2018, a federal court permanently enjoined implementation of the Attorney General’s decision in *Matter of A-B-* and related policy guidance, holding that the opinion and related policies were contrary to the Refugee Act, the Immigration and Nationality Act, and the Administrative Procedure Act.<sup>23</sup> The Court ordered the government to return plaintiffs deported under the decision so that they can receive new credible fear interviews consistent with the law.<sup>24</sup>

Although the Attorney General’s harmful decision was recently enjoined by a federal judge, the Administration’s efforts to restrict asylum continue apace and continue to endanger the lives of thousands. In December 2018, Acting Attorney General Matthew Whitaker also certified for his review an asylum case and requested briefing on whether and under what circumstances an asylum seeker can establish persecution on the basis of membership in a family unit.<sup>25</sup> Family membership has long been recognized as a cognizable social group under U.S. asylum law for purposes of establishing eligibility for asylum.

## **B. DOJ’s Interim Final Rule Barring Asylum Eligibility**

In November 2018, DHS and DOJ issued an interim final rule, to take effect immediately, barring individuals who enter the United States outside a designated port of entry from eligibility for asylum.<sup>26</sup> While officials initially stated that unaccompanied children were not subject to the rule, later USCIS guidance stated that unaccompanied children would be processed according to the HSA and TVPRA, but “would per the terms of this proclamation and the [interim final rule] be barred from asylum eligibility.”<sup>27</sup>

By denying asylum based solely on how an individual enters the United States the rule violates the INA, which provides that “[a]ny alien who is physically present in the United States or who

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<sup>23</sup> *Grace v. Whitaker*, No. 18-cv-01853 (EGS), Memorandum Opinion (D.D.C. Dec. 19, 2018), at 56, available at <https://www.aclu.org/legal-document/grace-v-whitaker-opinion>.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018), <https://www.justice.gov/eoir/page/file/1116866/download>.

<sup>26</sup> USCIS, DHS, EOIR, DOJ, “Interim Final Rule on Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims” (EOIR Docket No. 18–0501), 83 Fed. Reg. 55936 (Nov. 9, 2018).

<sup>27</sup> Director Francis Cissna, USCIS, Procedural Guidance for Implementing Regulatory Changes Created by Interim Final Rule, Aliens Subject to a Bar on Entry under Certain Presidential Proclamations; Procedures for Protection Claims (Nov. 9, 2018), [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-11-09-PM-602-0166-Procedural\\_Guidance\\_for\\_Implementing\\_Regulatory\\_Changes\\_Created\\_by\\_Interim\\_Final\\_Rule.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-11-09-PM-602-0166-Procedural_Guidance_for_Implementing_Regulatory_Changes_Created_by_Interim_Final_Rule.pdf).



arrives in the United States (*whether or not at a designated port of arrival . . .*), irrespective of such alien’s status, may apply for asylum. . . .”<sup>28</sup> This provision is of vital importance because asylum seekers fleeing for their lives—and unaccompanied children in particular—often have little control over where or how they enter the country. The rule is also fundamentally at odds with the TVPRA, which sets forth several protections intended to explicitly address, *not* exacerbate, these children’s unique vulnerability in our immigration system.

It defies logic and basic principles of statutory interpretation that Congress would specify several procedural protections for unaccompanied children, including the opportunity to have their asylum claims first heard by USCIS<sup>29</sup> and their exemption from the one-year filing deadline and safe third country bar,<sup>30</sup> yet permit the Attorney General to wholly eliminate these children’s eligibility for asylum based on how they entered the U.S.

Like several other policies of the Administration, DOJ and DHS’ interim final rule has been enjoined, with a federal court having preliminarily concluded that the legal challenge to the rule is likely to succeed.<sup>31</sup> Despite this pause, the policy nevertheless injects continued skepticism toward the protection needs of those fleeing grave violence and suggests the Department of Justice’s willingness to disregard established laws and protections for asylum seekers. Mindful of the Administration’s prior encroachments in this area, the next Attorney General should underscore the need for judges to act impartially in all cases before them and to exercise special care to comply with laws pertaining to protection claims.

## **C. DOJ’s Enforcement Policies and Impacts on Children**

### **1. Zero Tolerance and Family Separation**

In April 2018, then-Attorney General Sessions announced a “zero tolerance” policy under which all individuals arriving in between designated ports of entry, including families requesting asylum, would be prosecuted for illegal entry or reentry into the U.S.

This policy, which had been considered by the Administration as early as March 2017, targeted families fleeing for their lives and runs directly counter to U.S. asylum law and international law underscoring the right of individuals fearing persecution to seek humanitarian protection free of penalties or punishment for doing so. More than 2,600 families were torn apart under the policy, which drew widespread condemnation and outcry from the public and policymakers alike. These separations have had devastating consequences for the well-being of children and parents, and their cases for legal protection.

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<sup>28</sup> 4 INA § 208(a)(1); 8 U.S.C. 1158(a)(1) (emphasis added).

<sup>29</sup> 8 U.S.C. 1158(b)(3)(C).

<sup>30</sup> INA 208(a)(2)(E).

<sup>31</sup> *See East Bay Sanctuary v. Trump*, Order Granting Temporary Restraining Order to Show Cause re Preliminary Injunction, 18-cv-06810-JST (N.D. Cal. Nov. 19, 2018), <https://www.aclu.org/legal-document/east-bay-sanctuary-covenant-v-trump-tro-granted>; *see also* *O.A. v. Trump*, *O.A. v. Trump*, 1:180cv-02718-RDM (D.D.C.), Complaint for Declaratory and Injunctive Relief (Nov. 20, 2018), at 27-28, <https://www.humanrightsfirst.org/sites/default/files/oavtrump.pdf>.

Under the Administration's "zero tolerance" policy, parents were referred for criminal prosecution by DOJ and were detained in federal custody of the U.S. Marshals or DHS, while their children were re-designated as "unaccompanied" and placed in the custody of the Department of Health and Human Services' Office of Refugee Resettlement (ORR). Pediatricians and child welfare professionals have spoken out about the trauma that resulted from these separations and its impact on the developmental, mental, and emotional health of children.

KIND stepped in early in the family separation crisis and has assisted more than 300 children who were torn from their parents. KIND also provided support to separated parents, including assistance in preparing for credible fear interviews, reestablishing contact with separated children, and pursuing reunification. Through this work, KIND has learned first-hand how this policy and the Department of Justice's related efforts to restrict access to asylum and humanitarian relief are affecting children in desperate need of protection.

Family separations create grave challenges for children's access to humanitarian protection and the fair consideration of their legal cases. Many children seeking humanitarian protection, such as asylum, share claims with their parents, who frequently possess details and documentation that are essential to helping establish a child's eligibility for legal relief. Forced separations under the zero tolerance policy, including of pre-verbal infants and toddlers, left many children unable to describe the circumstances that drove their family's migration to the U.S. or without access to documentation and information needed to prove their eligibility for legal protection. Parents and children were detained in different facilities, potentially across the country, and hundreds of parents were deported without knowledge of where their child had been transferred or detained. For many children, the initial trauma of separation was exacerbated by detention of indefinite length with little to no contact with parents and other loved ones. Overcome by pain and uncertainty, some children dropped their claims for humanitarian protection and requested return to the countries from which they fled, despite the dangers that might befall them.

The Department of Justice's role in announcing and implementing the zero tolerance policy raises serious questions about the agency's enforcement priorities and the availability of due process in proceedings administered by the agency. The enforcement of our immigration laws need not and should not come at the expense of children's well-being.

## **Conclusion**

The opportunity to tell one's story and to pursue protection from harm and persecution is a foundation of our immigration system. Recent policies of the Department of Justice, however, have undermined unaccompanied children's ability to access these basic procedural protections, with grave implications. We urge the Committee to consider the above policies, and the disposition of any nominees for Attorney General toward them, to ensure the integrity of our immigration courts and our nation's commitment to extending protection to those whose lives are in peril.