

**MCWNN**  
**STATEMENT ON THE**  
**WELFARE OF UNACCOMPANIED**  
**IMMIGRANT CHILDREN**

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The Migration and Child Welfare National Network (MCWNN), a peer membership organization, promotes the welfare of children of immigrants and their families through research, education, policy recommendations, and national leadership. The MCWNN works nationally to inform and coordinate child welfare, legal, and community responses to the unique needs and strengths of children of immigrants (currently 25% of all U.S. children), building organizational and individual capacities to ensure a bright future for all Americans. For more information, visit [www.mcwnn.uic.edu](http://www.mcwnn.uic.edu).

*The MCWNN is gravely concerned over the welfare of the rising number of unaccompanied immigrant children in U.S. custody and has created a special [webpage](#) devoted to this issue.*

As an organization based in the principles of U.S. child welfare, MCWNN promotes safety, permanence, and well-being for children through identification and support of their best interests. “Best interests” in the U.S. typically guide court deliberations regarding the services, actions, and orders that will best serve vulnerable children and who should care for them. There is a general consensus on best interest principles that recognize children’s special vulnerabilities and developmental needs. The guidelines and principles discussed in this statement on unaccompanied immigrant children are based on the following U.S. state and federal laws and international agreements.<sup>1, 2, 3</sup>



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[U.S. State Child Welfare Statutes](#) (the following “best interests” guiding principles are those frequently mentioned across different state statutes):

- Family integrity and keeping the child together with parents and other family members whenever possible, particularly when there are strong emotional ties
- The child’s protection, safety, and health (not including family socioeconomic circumstances)
- Timely decisions regarding permanency (generally reunification with family, permanent legal guardianship, or adoption)
- When it is not possible for a child to live with parents or other family members, the provision of the care, treatment, and guidance children require to become functional independent adults
- The child’s preference, considering the age, maturity, and other circumstances of the child

U.S. Immigration Laws and Agreements:

- [William Wilberforce Trafficking Victims Protection Reauthorization Act \(TVPRA, 2008\) \(8 USC 1232\)](#)
- [Flores Settlement Agreement; Case No. CV 85-4544RJK \(C.D. Cal. 1996\)](#)
- [Perez-Olano Settlement Agreement, Case No. CV 05-3604 \(C.D. Cal., 2010\)](#)
- [Homeland Security Act \(2002\), Section 462 \(6 USC 279\)](#)
- [Violence Against Women Reauthorization Act of 2013 \(Pub. L. 113-4\)](#)
- [Perez-Funez v. District Director, I.N.S., 619 F.Supp. 656 \(C.D.Cal. 1985\).](#)
- [Immigration and Nationality Act](#) (INA), sections 101(a)(42) and 208, as amended by the [Refugee Act of 1980](#) (based on the United Nations [1951 Convention and 1967 Protocol relating to the Status of Refugees](#)).

United Nations International Principles and Guidelines:

- [A Framework for the Protection of Children](#) (UNHCR, 2012)
- [Guidelines on Determining the Best Interests of the Child](#) (UNHCR, 2008)
- [Convention on the Rights of the Child](#) (1989)
- [Universal Declaration of Human Rights](#) (1948)

The following statements are drawn from the laws and principles listed above, and have been proposed as “best interest of the child” guidelines for cases involving unaccompanied immigrant children:<sup>4</sup>

- *Eliciting the child’s views and preferences in a developmentally- and trauma-informed manner.*
- *Addressing the child’s safety and security concerns.*
- *Assessing the child’s mental and physical health.*
- *Supporting family relationships, while understanding the potential impact of separation from a parent or guardian, siblings, and other members of the child’s family.*
- *Prioritizing the child’s sense of security, familiarity and attachments.*
- *Facilitating the child’s overall well-being, including the need for comprehensive services, including education and other supports for their healthy development.*
- *Respecting the child’s ethnic, religious, cultural and language background, and migration context, including serving children with indigenous backgrounds in a culturally and linguistically responsive manner.<sup>5,6</sup>*

The child welfare principles of safety, permanence, and well-being apply to all children in the United States, regardless of immigrant status and country of origin. As a country that promulgates international human rights, including for children, it is vital that the U.S. government uphold these principles for unaccompanied immigrant children in federal custody.

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## Safety

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*Current research and reports are clear that the majority of unaccompanied immigrant children are fleeing their home countries first and foremost due to threats to their safety, making many of these children eligible for international protection.*

- The United Nations High Commissioner for Refugees found that 58% of unaccompanied immigrant children met the standards for international protection, including refugee protection. The U.S. is party to the 1951 Convention and 1967 Protocol on the status of refugees and thus bound by the principle of *non-refoulement*—that refugees cannot be returned to persecution.<sup>7</sup>
- Between 2008 and 2013, asylum applications from citizens of Honduras, Guatemala, and El Salvador to surrounding countries increased by 712%.<sup>8</sup>
- The Center for Gender and Refugee Studies at UC Hastings College of the Law and Kids In Need of Defense estimate that 40-60% of unaccompanied children are eligible for relief under U.S. immigration law.<sup>9</sup>
- The U.S. Department of State has recognized that crime and violence in Central America has reached a critical level.<sup>10</sup>
- A 2014 security report stated that, for Honduras, “entire portions of its sovereign territory [are] out of control of the central government due to drug cartel activity, and extremely high homicide and violent crime rates”.<sup>11</sup>
- The American Immigration Council found that almost 60% of the unaccompanied children from El Salvador interviewed reported crime, gang threats, or violence as their main reasons for leaving home.<sup>12</sup>
- A 2014 study documented problems regarding the screening, protection, and repatriation of children by U.S. Customs and Border Protection agents.<sup>13</sup>

*To address these issues, the U.S. should protect unaccompanied children’s safety by:*

- Improving screening mechanisms for children apprehended at the border, such as requiring Customs and Border Patrol to contract with child welfare professionals to interview children.
- Ensuring that children’s due process rights are upheld as stipulated by U.S. immigration laws and agreements. Due process should not be compromised by the current practice of “priority dockets”, an accelerated immigration court process. Children should receive timely legal orientation, legal services, and legal representation in court. Currently, immigrant children are treated as adults in U.S. immigration courts, in contrast to the treatment of children in all other U.S. courts, where their needs are addressed as paramount concerns.
- Never placing children who have been abused, neglected, or abandoned, or are classified as dependent children, in facilities with, or primarily used for, juvenile or adult offenders.
- Allowing adequate time to identify and carefully screen potential U.S. sponsors, including parents and other family members, prior to placement.
- Providing follow-up services for all children placed with sponsors in the U.S. to promote their long-term safety, placement stability, and well-being.
- Working in partnership with governments in countries of origin to develop safe repatriation and reintegration programs for returned children and developing strategies to address the root causes of the violence and instability causing children to flee.

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## *Permanence*

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*Permanence for unaccompanied immigrant children generally means family reunification, kinship or other types of foster care, whether in the U.S. or other countries where family members reside.*<sup>14, 15</sup>

- Reunification with family or other caring sponsors should be provided as quickly as can be done safely, while awaiting the resolution of children’s legal cases. At the same time, adequate screening, background checks, and preparation for all sponsors must be undertaken. Ensuring appropriate placement and support for sponsors will provide the best opportunity for a stable and caring living situation for children, temporarily or for the long-term.
- When parents or family members are unavailable, children should be placed in the least-restrictive environment possible, such as foster care settings.
- In addition to the Office of Refugee Resettlement services, follow-up services with a focus on family strengthening, community service coordination, and organizational capacity-building are needed to ensure children’s safety, well-being, and stable and caring environments, while their legal cases are under consideration.

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## *Well-being*

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- All services for unaccompanied children should be trauma-informed, given the situations so many children are fleeing and the trauma almost all experience on their journeys to the U.S.<sup>16</sup>
- All services for unaccompanied children should be based on child welfare principles that support healthy development within the context of children’s unique vulnerabilities and developmental needs. Research supports following the child welfare priorities of family preservation and reunification, whenever possible.

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## *MCWNN Member Statements*

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***We join with our national members and others involved in this critical work to urge support for the safety, permanence, and well-being of unaccompanied immigrant children:***

- The National Association of Social Workers released a [Social Justice Brief](#), urging social workers to “respond to the complexities of the humanitarian elements of the problem” on August 6, 2014.
- First Focus released [recommendations](#) and the First Focus Campaign for Children submitted a [statement](#) for the record to the U.S. House Judiciary Committee on July 10, 2014.
- The Young Center for Immigrant Children’s Rights provided a [press release](#) with recommendations for the President and Congress on July 10, 2014.
- The Center on Gender and Refugee Studies issued a [statement](#) on June 30, 2014.
- The American Bar Association provided a [statement](#) to the Judiciary Committee of the U.S. House of Representatives on June 25, 2014.
- The Women’s Refugee Commission submitted a [statement](#) to the Committee on the Judiciary of the U.S. House of Representatives on June 25, 2014.
- The UNHCR issued a [statement](#) to the Judiciary Committee of the U.S. House of Representatives on June 25, 2014.

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- <sup>1</sup> U.S. Department of Health and Human Services, Administration for Children, Youth, and Families/Children's Bureau, Child Welfare Information Gateway. (n.d.). *Determining the Best Interests of the Child*. Retrieved from [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.cfm](https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm).
- <sup>2</sup> U.S. Department of Health and Human Services (DHHS/ACF), Office of Refugee Resettlement. (n.d.). *About Unaccompanied Children's Services*. Retrieved from <http://www.acf.hhs.gov/programs/orr/programs/ucs/about>.
- <sup>3</sup> Woltjen, M. (2014). *The Best Interests Principle of the Convention on the Rights of the Child Applied in the US-- Ensuring Rights-Based Safeguards for Migrant Children*. The Young Center for Immigrant Children's Rights at the University of Chicago. Pages 7-20. Retrieved from <http://www.corestandardsforguardians.com/images/24/339.pdf>.
- <sup>4</sup> *ibid.*
- <sup>5</sup> Dettlaff, A. J. & Rycraft, J. R. (2006). The impact of migration and acculturation on Latino children and families: Implications for child welfare practice. *Protecting Children*, 21(2), 6-21. Retrieved from [http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/The%20Impact%20of%20Migration%20and%20Acculturation%20on%20Latino%20Children%20and%20Families\\_Implications%20for%20Child%20Welfare%20Practice.pdf](http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/The%20Impact%20of%20Migration%20and%20Acculturation%20on%20Latino%20Children%20and%20Families_Implications%20for%20Child%20Welfare%20Practice.pdf).
- <sup>6</sup> Chapman, M. V., & Perreira, K. M. (2005). The Well-being of immigrant Latino youth: A framework to inform practice. *Families in Society: The Journal of Contemporary Social Services*, 86(1), 104-111. Retrieved from [http://www.ucdenver.edu/academics/colleges/CLAS/Centers/writing/resources/Documents/Resources/LatinYouth\\_NE\\_W.pdf](http://www.ucdenver.edu/academics/colleges/CLAS/Centers/writing/resources/Documents/Resources/LatinYouth_NE_W.pdf).
- <sup>7</sup> United Nations High Commissioner for Refugees (UNHCR). (2014). *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection*. Washington, D.C.: UNHCR Regional Office for the United States and the Caribbean. Retrieved from [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20On%20the%20Run\\_Executive%20Summary.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20On%20the%20Run_Executive%20Summary.pdf).
- <sup>8</sup> *ibid.*
- <sup>9</sup> Frydman, L. & Dallam, E. (2014). *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*. San Francisco, CA and Washington, DC: Center for Gender & Refugee Studies (CGRS) and Kids in Need of Defense (KIND). Retrieved from [http://www.uchastings.edu/centers/cgrs-docs/treacherous\\_journey\\_cgrs\\_kind\\_report.pdf](http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf).
- <sup>10</sup> U.S. Department of State. (June 24, 2014). *Honduras Travel Warning*. Retrieved from <http://travel.state.gov/content/passports/english/alertswarnings/honduras-travel-warning.html>.
- <sup>11</sup> FTI Consulting. (2014). *Public Insecurity in Latin America*. Retrieved from <http://www.fticonsulting.com/global2/media/collateral/united-states/2014-latin-america-security-index.pdf>.
- <sup>12</sup> Kennedy, E. (2014). *No Childhood Here: Why Central American Children Are Fleeing Their Homes*. Immigration Policy Center, American Immigration Council. Retrieved from <http://www.immigrationpolicy.org/perspectives/no-childhood-here-why-central-american-children-are-fleeing-their-homes>.
- <sup>13</sup> Appleseed Foundation. (2011). *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*. Retrieved from <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.
- <sup>14</sup> "Foster care" here refers to kinship care, family foster care, treatment foster care, residential and group care, and supervised independent living.
- <sup>15</sup> Morland, L. (2014). Kinship care and immigrant families. *FOCUS*, 20(1), 13-15. Washington, DC: Foster Family-based Treatment Association (FFTA). Retrieved from <http://research.jacsw.uic.edu/icwnn/files/2014/03/FOCUS-Winter-2014-Kinship-Care-and-Immigrant-Families1.pdf>.
- <sup>16</sup> Flores, L. & Kaplan, A. (2009). *Addressing the mental health problems of border and immigrant youth*. Los Angeles, CA & Durham, NC: National Center for Child Traumatic Stress. Retrieved from [http://www.nctsn.org/nctsn\\_assets/pdfs/BorderlandersSpecialReport\\_Final\\_0.pdf](http://www.nctsn.org/nctsn_assets/pdfs/BorderlandersSpecialReport_Final_0.pdf).

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