



Shifting the Lens

A family-focused approach to the treatment of unaccompanied children

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This paper re-frames unaccompanied children as part of a family unit and draws from principles from Catholic Teaching and U.S. Child Welfare best practice on supporting and strengthening families. The recommendations promote policy and programming for unaccompanied migrating children that is family-focused, sustainable, and in the best interest of the child.

Executive Summary

Promoting the dignity of migrating persons is a key priority of the global Catholic Church. In the United States, the Church has been involved in immigration issues since the early 20th century. Under the auspices of the National Catholic Welfare Conference (NCWC), in 1920 the bishops established a Bureau of Immigration that was housed in Washington, DC. Soon thereafter the bishops established branch offices on Ellis Island, in El Paso, Texas, and at other points of entry as a way to provide welcome and support to newly arrived migrants. In the four years following the passage of the Displaced Persons Act of 1948, the Church assisted in the resettlement of nearly 200,000 European refugees. This legacy continues today through the service, advocacy, and education activities of the United States Conference of Catholic Bishops' department of Migration and Refugee Services (USCCB/MRS).

In recent years, the United States has witnessed a dramatic increase in the number of children migrating to the country alone, seeking protection. These are indisputably the most vulnerable of migrants. They depart their home countries, sometimes with family, sometimes with other children, and sometimes alone, in search of a better life. While the migration of children from Central America and Mexico to the United States is not a new phenomenon, the number of children who choose to make the perilous journey alone has increased exponentially in recent years¹, coinciding with increased violence in the communities from which they are fleeing. In fact, a study conducted by the United Nations High Commissioner for Refugees (UNHCR) found that “58 percent of 404 children interviewed for a UNHCR study were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection.”²

Of the unaccompanied children who make it to the United States, HHS/ORR reports that (as of November 2014) 85 percent of children in its care are released to family members and that the average time in care prior to release is 29 days.³ However, much of the national conversation focuses on the population as unaccompanied, and attention and resources are directed at the time while the children are in federal custody, despite the fact that most children are reunited and in the care of family already living in the United States shortly after they arrive.

This paper re-frames unaccompanied children as part of a family unit and draws from principles from Catholic Teaching and U.S. Child Welfare best practice on supporting and strengthening families as they are reuniting, even if temporarily as they navigate immigration proceedings. The recommendations

¹The U.S. Department of Health and Human Services' Office of Refugee Resettlement, which provides for the custody and care of unaccompanied children without immigration status, reports that it served an average of 7,000-8,000 children from Fiscal Years 2002—2011; 13,625 in FY2012; 24,668 in FY 2013; and 57,496 in FY 2014. United States Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office of Refugee Resettlement (ORR), “Fact Sheet on Unaccompanied Children’s Services,” (Washington, DC: HHS/ACF/ORR, 2014), https://www.acf.hhs.gov/sites/default/files/orr/fact_sheet.pdf. (Accessed on March 20, 2015).

² The United Nations High Commissioner for Refugees (UNHCR), “Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection,” (Washington, DC: UNHCR, 2014), 6.

³ HHS/ACF/ORR, Fact Sheet on Unaccompanied Children’s Services,” (Washington, DC: HHS/ACF/ORR, 2014), https://www.acf.hhs.gov/sites/default/files/orr/fact_sheet.pdf. (Accessed on March 20, 2015).

included in this paper promote policy and programming for unaccompanied migrating children that is family-focused, sustainable, and in the best interest of the child.

Introduction

Overview of Population

The United States Conference of Catholic Bishops' department of Migration and Refugee Services (USCCB/MRS) provides foster care, family reunification, legal, and child advocacy services to unaccompanied, migrating children. In its multi-decade history of providing foster care and family reunification services, it has seen the reasons children report for their migration change. In the 1990s and 2000s, many children reported to their social workers that they left their families and homelands to reunify with family members living in the United States and to seek educational and employment opportunities. As we entered the second decade of the 21st century, in the wake of the Great Recession of 2009, children began to arrive in greater numbers, and they reported that fleeing community violence became one of the primary motivators of their departure.

The experience of child migrants on their journey north is harrowing, and the risk they are willing to take underscores the gravity of situations from which they are fleeing. Most travel on tops of "The Beast", the migrants' name for the train that runs from Central America, through Mexico, and to the border with the United States. Some make arrangements with smugglers, some of whom are part of armed criminal groups, and others depart on their own, or in groups. While on "The Beast", child and adult migrants sustain multiple injuries and even severed limbs; witness injury and often death of other migrants, including of friends or family; are victims of physical or sexual assault by gangs or police or immigration enforcers in the countries they cross en route to the United States; and are subjected to kidnapping, extortion, and threats to themselves and their families.

A USCCB delegation traveled to Central America in November 2013 to seek understanding of the factors contributing to the surge of unaccompanied children fleeing to the United States. The delegation met with child and adult migrants; pastoral units of Catholic churches providing shelter, counseling, family reunification services, and basic needs to migrants; non-government organizations; local government departments of migration and child welfare; and U.S. embassies in Mexico, Guatemala, Honduras, and El Salvador. All sources led to the same conclusion—that the reason for the increase is complex, and there are multiple, interrelated factors-- the decline in the economy, environmental factors affecting crop production, lack of strong social institutions (i.e. education and child welfare), family separation leading to the break down in the family unit—but that "one overriding factor has played a decisive and forceful role in recent years: generalized violence at the state and local levels and a corresponding breakdown of the rule of law have threatened citizen security and created a culture of fear and hopelessness."⁴

Children under 18 years of age who enter the United States without an available legal guardian or parent to provide care and custody are referred to as Unaccompanied Alien Children (UAC) by U.S. law.⁵ This federal definition sticks with children throughout the pendency of their immigration proceedings,

4 The United States Conference of Catholic Bishops (USCCB). "Mission to Central America: The Flight of Unaccompanied Children to the United States," (Washington, DC: USCCB, 2013), 2.

5 Homeland Security Act of 2002, §462.2, 107th Cong., 2nd Sess. (2002).

regardless if they are reunified with family members. Reflecting principles of Catholic Teaching that human life is sacred and the dignity of the human person as a foundational lens, for the purposes of this paper, we will use the terms unaccompanied, migrating children; unaccompanied, migrant children; unaccompanied children; or, at times, more simply, children.

Custody and Release

Unaccompanied, migrant children are apprehended by the Department of Homeland Security (DHS): at the border by Customs and Border Protection (CBP), within the interior by Immigration and Customs Enforcement (ICE), and at maritime borders by U.S. Coast Guard (USCG). CBP conducts the majority of apprehensions of unaccompanied, migrant children. Children apprehended by DHS are placed in removal proceedings and given a “Notice to Appear” (NTA) in immigration court before the Department of Health and Human Services’ Office of Refugee Resettlement (HHS/ORR) takes custody within 72 hours.

HHS/ORR adheres to minimum standards established by the Flores Settlement⁶ for the custody and release of unaccompanied children. Among other services, unaccompanied children in HHS/ORR custody receive food, shelter, clothing, and educational, medical, mental health, and case management services. The Flores Settlement established that unaccompanied children have the right to reunify with sponsors (family members and other caregivers in the United States) while they are undergoing immigration proceedings, which includes (in order of preference) parents, legal guardians, grandparents, adult siblings, aunts, uncles, cousins, and, unrelated adults (i.e. family friends).⁷

HHS/ORR identifies family members and family friends of unaccompanied children in its care and custody who live in the United States and are interested in sponsoring children. HHS/ORR reports that 85 percent of children in its care⁸ are released to family members, who consent to ensure children attend their immigration proceedings as a condition of their release. For a limited number of children, HHS/ORR funds social service providers, including USCCB/MRS, to coordinate and provide home studies of family members and family friends who want to sponsor a child, and post-release services to support the reunification once the child is released. HHS/ORR began funding direct legal representation and child advocacy services for children released from its care in October 2014 and USCCB is one of its grantees.

Legal Rights and Access to Justice Obstacles

The ability of an unaccompanied migrant child to remain in the United States depends on eligibility for immigration relief, and the burden of proving that eligibility for immigration status is placed on the child. The U.S. immigration system is too complex for a child to navigate alone, and limited funding is available for immigration attorneys to represent children.

As previously mentioned, these children frequently are fleeing war, violence, poverty, or other dangerous circumstances on their own.⁹ Many of these children face international protection concerns

6 *Reno v. Flores*, 507 U.S. 292 (1993).

7 *Reno v. Flores*, 507 U.S. 292 (1993).

8 HHS/ACF/ORR, Fact Sheet on Unaccompanied Children’s Services,” (Washington, DC: HHS/ACF/ORR, 2014),

https://www.acf.hhs.gov/sites/default/files/orr/fact_sheet.pdf, (Accessed on March 20, 2015).

9 UNHCR: Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, available at <http://www.unhcrwashington.org/children/reports>. See also USCCB: Mission to Central America: Flight of the Unaccompanied

and meet conditions/requirements that would allow them to remain in the United States legally in some form of recognized legal status, such as Special Immigrant Juvenile Status (SIJS), child asylum, and T and U visas.¹⁰

SIJS protects unaccompanied children without legal status who have been abandoned, abused, or neglected, and for whom it is not in their best interest to return to their home country. SIJS enables eligible children to obtain lawful permanent residency.¹¹ The statutory basis for SIJS can be found in the Immigration and Nationality Act (INA) §203(b) (4), which allocates a percentage of immigrant visas to individuals considered “special immigrants,” and §101(a) (27) (J) which defines Special Immigrant Juveniles.¹² Congress initially created this status to address gaps in protecting children without legal status who were placed in state foster care programs. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) expanded the definition of SIJS. Now, children who are declared (1) dependent upon a juvenile court or placed under the custody of state agencies or court-appointed individuals or entities; (2) whose reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and (3) whose return to their country of nationality or last habitual residence is not in their best interest, may be able to obtain SIJS. Once a child obtains SIJS, he or she may apply, in accordance with 8 U.S.C. §1255, for SIJ-based adjustment of status for lawful permanent residency.

While SIJS is the only form of immigration relief that takes into account the best interest of the child, and uniquely involves family and immigration law, SIJS raises some concerns in regards to family unity and family preservation. SIJS requires a finding that a parent is abusive or neglectful to the child. A finding for SIJS purposes does not require formal termination of parental rights or a determination that reunification will never be possible, but children who receive this status are ineligible from sponsoring their parents for immigration status. This is counter to the goals of family reunification and preservation. Additionally, with the TVPRA 2008 changes to SIJS, Congress opened up the possibility for a child to file for SIJS based upon abuse, neglect or abandonment by one parent. In part because the regulations for the TVPRA of 2008 remain pending, the interpretation of the “1 or both parent standard” has presented challenges for state court judges. Some courts have interpreted this standard literally, permitting SIJS status where one parent has been the source of abuse, neglect, or abandonment but there is another parent with whom the child lives or reunification is viable. However, other courts have interpreted this language to require a finding that both parents have abused, abandoned, or neglected the child. For example, state courts in Nebraska, New York, New Jersey, and California have addressed the “1 or both parent standard” and have all come out with different interpretations. The varying interpretation of this standard by state courts illustrates the uncertainty of outcomes and the need for legal expertise in navigating an SIJS claim.

Immigrant Children to the United States available at <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>

¹⁰ For example, UNHCR’s latest report on Unaccompanied children leaving Central America and Mexico identified 58% of unaccompanied children they interviewed were found to have potential or actual international protection needs. UNHCR: Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, available at <http://www.unhcrwashington.org/children/reports>

¹¹ Immigration Act of 1990, Pub. L. 101-649, § 153, 104 Stat. 4978 (1990).

¹² INA § 101(a)(27)(J). This section was added by § 153 of the Immigration Act of 1990 (IA90) and amended most recently by the TVPRA 2008 § 235(d)(1)(B)(ii).

In an effort to enhance the protection of undocumented adults and children in the United States who are victims of human trafficking or other serious violent crimes, the TVPA created the T and U visa non-immigrant visa categories.¹³ U and T visas are two avenues of relief that are available to unaccompanied migrant children. U visas protect children who have suffered substantial physical or mental abuse as a result of having been victims of certain qualifying serious crimes.¹⁴ To obtain a U visa, a child must possess information about the qualifying crime and must receive a status certification from a law enforcement officer which signifies the child's cooperation with law enforcement. T visas protect victims of severe forms of human trafficking including the recruitment, harboring, transportation, provision or obtaining of a person for sex trafficking or labor or services.¹⁵ However, unlike U visas, T visas do not require the child receive a law enforcement certification.¹⁶

T and U visas offer certain benefits relating to family preservation. These forms of relief offer derivative claims, in that parents and certain siblings may apply for immigration status through the child who holds a T or U visa. While U and T visas offer more family reunification opportunities than SIJS, the process for achieving the visa, particularly the U visa, may be traumatic for the child as they must recount the trauma they endured and the crime that was perpetrated against them to law enforcement and agree to cooperate in investigations. Additionally, because of the inadequacies in child-appropriate screening for trafficking and violent crime, T and U visa cases are recognized as claims of immigration relief much less frequently and accordingly are under-utilized by pro bono legal representation.

Asylum is a claim that entails a child living outside their country of nationality; demonstrating a well-founded past or fear of future persecution based on a "protected ground": race, religion, nationality, political opinion or membership in a particular social group; and an inability or unwillingness to return to her country because her government is unable or unwilling to protect them.¹⁷ The legal criteria for asylum applies to both children and adults, however the United States Citizenship and Immigration Services (USCIS) is responsible for initial adjudication of asylum applications filed by unaccompanied children.

Asylum is typically more difficult to obtain than SIJ status, and as a result, unaccompanied children both with and without legal representation apply for it less often. One of the reasons that child asylum is a less-utilized form of relief than SIJS is the nature of asylum cases themselves. Asylum cases are reliant in many ways on an applicant's narrative, fact-finding elements of the claim, and credibility of the information given. With children, this can be an obstacle, as children are less developmentally mature than adults and face certain communication challenges due to their youth, vulnerability, immaturity, and unique responses to and perceptions of persecution and fear. Children are also less likely to straightforwardly volunteer information related to the persecution they experienced. As such, child asylum cases may be difficult for pro bono or other types of attorneys who do not have child welfare or immigration law experience and are less likely forms of relief for lawyers to attempt.

13 Victim of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 8 U.S.C. 1101 §101(a)(15)(T), 101(a)(15)(U), 214(n), 214(p), 245(1) and 245(m).

14 Victim of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 8 U.S.C. 1101 §101(a)(15)(U).

15 Victim of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, 8 U.S.C. 1101 §101(a)(15)(T).

16 Id at §101(a)(15)(T)(i)(III)(aa)-(cc).

17 INA §101(a) (42) 8 U.S.C. § 1101.

While these forms of relief exist and many unaccompanied children do have legitimate claims, there is still no legislatively-mandated right to legal representation to assist children while going through immigration proceedings within the United States.¹⁸ Many of these forms of relief are technical and require extensive filings, documentation and paperwork, that are best handled by a licensed and experienced attorney. A lack of guaranteed legal representation leaves unaccompanied children that have limited financial resources and socio-cultural and language barriers to navigate the U.S. immigration court system alone and as such makes them much less likely to successfully file and receive legal immigration status. Having counsel is a critical step to ensure that these most vulnerable of populations have a meaningful opportunity to seek the protections for which they qualify and to enhance their access to due process. The complexity of the U.S. immigration process inevitably leads to the removal of unaccompanied minors who would otherwise qualify to remain in the United States.

Congress has not enacted legislation mandating explicitly the appointment of counsel for unaccompanied children, but there is some existing legislation that requires HHS to make efforts to ensure legal representation. The TVPRA directs HHS to guarantee “to the greatest extent practicable” that all unaccompanied alien children who have been in DHS custody have counsel to represent them in immigration proceedings.¹⁹

Principles Guiding the Response to Unaccompanied Children

Catholic Teaching

The global Catholic Church holds a special duty to uphold the rights of immigrant families. Immigration policies and practices that reflect Catholic values must promote family unity and protect children. The Catechism of the Catholic Church teaches that the family is the “original cell of social life”, and that the political community has a duty to honor and assist the family, especially, among other duties, “the protection of the stability of the marriage bond and the institution of the family.”²⁰ It is the view of the Church that protecting the sanctity of the family should not depend on a family’s nationality or immigration status. As stated in the Charter of the Rights of the Family presented by the Holy See, “The families of migrants have the right to the same protection as that accorded to other families.”²¹ Accordingly, families should be able to remain together despite their legal status or circumstances and our laws and policies should be tailored toward that goal.

The sanctity of the family is also an integral element of Catholic approach to immigration reform in the United States. USCCB/MRS advocates for comprehensive immigration reform that reflects family-based immigration law principles with a focus on family reunification and protection of vulnerable groups such

18 The Homeland Security Act requires the Office of Refugee Resettlement to ensure that qualified and independent legal counsel and legal orientation programs are appointed for unaccompanied children in its custody in a timely manner. When released from custody, these children and their sponsors must find lawyers or navigate the court system alone.

19 TVPRA §235(c)(5)

20 Catechism of the Catholic Church. Accessed September 5, 2014. <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catechism/catechism-of-the-catholic-church/epub/OEBPS/37-chapter17.xhtml#subchapter275>

21 Charter of the Rights of the Family, October 22, 1983, available at http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html

as children. Family unity represents a cornerstone of immigration law, and is evidenced in legislative provisions and judicial interpretations throughout American history.

The January 2003 pastoral statement on migration of the U.S. and Mexican Catholic Bishops, *Strangers No Longer: Together on the Journey of Hope* notes that any just immigration reform proposal should include changes to the family-based immigration system to reduce waiting times for family reunification and should include humanitarian considerations for families.²² In addition to stating the need for family-immigration perspective to be inherent in any reform of the U.S. immigration system, *Strangers No Longer* specifically speaks of the unaccompanied child, noting this special population's heightened vulnerability, and the corresponding need for special consideration and care.²³ Through *Strangers No Longer*, the U.S. Bishop's interest and longstanding role in caring for unaccompanied children is evident. The Church provides witness, through human solidarity, to the rights and dignity of the child to be with their family whenever possible.

Internationally and Nationally Recognized Child Welfare Principles

The United States' child welfare principles are established by the Children's Bureau (CB), "the first federal agency within the U.S. government—and in fact, the world—to focus exclusively on improving the lives of children and families."²⁴ The CB defines its purpose as improving child outcomes in the following key areas: "safety: preventing and responding to maltreatment of children; permanency: stabilizing children's living situations and preserving family relationships and connections; and well-being: enhancing families' capacity to meet their children's physical, mental health and educational needs."²⁵

Applying the concept of permanency to unaccompanied children means that every effort should be made to prioritize the relational and physical permanency of the child. Physical permanency refers to a home and relational permanency is having a "relationship or connection with a caring adult..."²⁶ In the context of an unaccompanied child, this includes both pursuing and prioritizing family reunification, where safe and appropriate to do so, and legal permanency, in the child's home country, in their country of refuge, or, in a third country—based on a determination of the child's best interest.

The "best interest of the child" is an internationally recognized child welfare standard. Although there are many definitions of this term, it generally refers to a process of determining which services, care arrangements, caregivers, and placement are best suited to meet a child's short-term and long-term needs and ensure their safety, permanency, and well-being.

In the United States, the most frequently used guiding principles of best interest determinations include:

22 United States and Mexican Catholic Bishops, "Strangers No Longer-- Together on The Journey of Hope," United States Conference of Catholic Bishops; (Washington, DC, January 2003) ¶64-67.

23 Strangers No Longer, Together on the Journey of Hope, Pastoral Statement Concerning Migration from the US and Mexican Catholic Bishops, ¶182 January 2003

24 U.S. Department of Health and Human Services' Administration for Children and Families (HHS/ACF), Children's Bureau (CB), "Home," CB, <http://www.acf.hhs.gov/programs/cb/about> (Accessed March 20, 2015).

25 HHS/ACF/CB, "CB Fact Sheet," CB, <http://www.acf.hhs.gov/programs/cb/fact-sheet-cb> (Accessed March 20, 2015).

26 HHS/ACF/CB, "CB Fact Sheet," CB, <http://www.acf.hhs.gov/programs/cb/fact-sheet-cb> (Accessed March 20, 2015).

- “The importance of family integrity and preference for avoiding removal of the child from his/her home...
- The health, safety, and/or protection of the child...
- The importance of timely permanency decisions...
- The assurance that a child removed from his/her home will be given care, treatment, and guidance that will assist the child in developing into a self-sufficient adult...”²⁷

States apply best interest determinations when making decisions about cases of children and families that come to their attention. The safety of the child is paramount, and at times, children are removed from their homes and families to ensure their safety and well-being. However, interventions emphasize strengthening the caregiver’s ability to adequately protect and supervise the child through supportive services and skill-building, with the goal of reducing risk for family breakdown and supporting the child remaining with their family as the first priority. The client, therefore, is the family unit as a whole, and decisions made to remove a child, whether on a temporary or permanent basis from their home, are under the jurisdiction of a family court judge.

The United Nations High Commissioner for Refugees (UNHCR), in its Guidelines on Determining the Best Interest of the Child²⁸, builds on the practices of member country child welfare systems, providing guidelines on implementation of the standard in practice in countries that lack a robust child welfare infrastructure. The UNHCR Guidelines are also useful when considering how to apply existing child welfare guidelines to the unique needs of unaccompanied migrant children, who require a transnational lens, as they often have family in one or more countries. Both UNHCR and the U.S. domestic child welfare system emphasize the input of the child and the family in decisions about their care and custody, and preferring placements with families or in community-based, family-based settings wherever and whenever possible.

Shifting the Lens

The resources and attention the United States has directed to ensure the custody and care of unaccompanied children is in their best interest is noteworthy. Prior to 2002, the former Immigration and Naturalization Service (INS) was responsible for the care and custody of UAC detained based on their lack of immigration status. This custodial relationship meant the federal government agency responsible for immigration enforcement and removal was charged with the conflicting interest of care and child protection. As a result, children were housed mainly in detention facilities and their movements were severely restricted. Very few children were cared for in community-based settings.

In 1996, the Flores Settlement established minimum standards and conditions for the detention, housing, and release of unaccompanied, migrant children taken into the custody of the U.S. government. The Flores Settlement also established that unaccompanied, migrant children have the right to reunify with family members and other caregivers in the United States.

²⁷ Child Welfare Information Gateway, “Determining the Best Interests of the Child,” (Washington, DC: U.S. Department of Health and Human Services, The Children’s Bureau, 2012), 2. https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf (Accessed May 1, 2014).

²⁸ UNHCR, “UNHCR Guidelines on Determining the Best Interest of the Child,” (Geneva, Switzerland: UNHCR, 2008). <http://www.unhcr.org/4566b16b2.html> (Accessed May 1, 2014).

The Homeland Security Act of 2002 (HSA) reorganized federal responsibilities for unaccompanied children and created the Department of Homeland Security (DHS). Under HSA, DHS is responsible for processing and transporting apprehended children to HHS/ORR within 72 hours and HHS/ORR is responsible for the care and custody of unaccompanied children pending the resolution of their immigration case. This legislative change eliminated the conflict of interest within the U.S. government and allowed children to be placed in the least restrictive care environment and release to family members.

Many children are released from custody to sponsors without a home visit to assess the appropriateness and capacity of the sponsor to protect the child, and without services provided to the family to support the reunification and reintegration once the child is released to the community. Currently, only family members residing in the United States are considered as viable reunification options, contrary to a best interest determination process which would be applied if the child were to be in the care of the domestic child welfare system in which the viability of reunification of all family members, regardless of country, would be considered and pursued.

While guidelines exist for voluntary repatriation, the majority of children returned to their home countries from the United States do so involuntarily due to immigration enforcement and removal. Mexican children whom DHS determines are not at risk are upon apprehension immediately returned to Mexico and children from other countries are repatriated if they are found ineligible for any form of immigration relief. These legal factors essentially trump the child's best interest and do not take into account the child's economic, social, and cultural background, and location of their family. At times, children are repatriated without escorts or notification to their care givers in the country of origin. This not only results in a lack of continuity of care and services for the child, but threatens the child's successful integration back into their home country. This holds especially true for children who have lived in the United States for many years before being internally apprehended. They are unaccustomed to life in their home country and unless they are provided with appropriate and relevant reintegration support, they will likely attempt the dangerous journey of returning to the United States.

A structure that appropriately responds to the care and treatment of unaccompanied children would ensure the best interest of the child underlies all decision-making; children and their families are active participants in decisions about their care and custody; reunite children with families or in community-based, family-based settings wherever and whenever possible; and require unaccompanied, migrant children to be included within the country's existing child welfare framework while maintaining a model that is designed for the special needs of the foreign-born child with migration experiences.

Discussion of Current Models and Approaches

The following discussion will highlight models and approaches that, in our experience, if applied to the care and custody of unaccompanied, migrant children would help to ensure their best interests.

Research promoted by the Children's Bureau suggests that engaging the family as a collective unit during the family reunification process is essential to improving the likelihood of a successful

placement²⁹. Current practice models further demonstrate the necessity of family engagement and a family-centered approach to improving long-term child outcomes.

Refugee Resettlement Model

The context of unaccompanied children reuniting with family in the United States has many parallels with refugee resettlement. For example, like refugees, children who have recently arrived to the United States need cultural orientation, services focused on community integration, international family tracing, and assistance dealing with migration-related trauma. In addition, children and families need immigration legal assistance as they navigate complex processes of our immigration system. The existing U.S. refugee resettlement framework provides a current example from which to model comprehensive, community-based services to unaccompanied migrant children and families. The approaches outlined below can be combined with the established refugee resettlement model.

Family Engagement Approach³⁰

The Family Engagement approach is based on the principles of a family-centered and strengths-based approach. The goal of this approach is to empower families to recognize their own needs, strengths, and available resources and work collectively towards achieving positive outcomes. This is done by promoting open communication, encouraging families to build on strengths, involving the extended family, and engaging family members as key stakeholders throughout the process.

By promoting open and honest communication with families from the beginning of the family reunification process, the caseworker is better able to establish rapport early, thus increasing the likelihood of successful interventions. Open communication throughout the family reunification process, beginning during the home study phase, helps to ensure the most appropriate service provision both pre and post-release. The Family Engagement approach encourages families to build on their existing strengths and kinship connections, including family, social, and community support systems. Building on the concept of the “family search and engagement” approach, including both parents, as well as extended family, in this process early on helps to expand available options for placement by leveraging existing kinship relationships. For migrant children reunified with family members following release from federal custody, early family engagement would help in the identification of the most appropriate sponsor and would help work towards achieving the child’s safety, permanency, and well-being post-release. Additionally, engaging extended family early on may help to expand the options to provide an additional supportive safety net, in the event there is a placement breakdown post-reunification and an alternative placement is needed.

Frequent Home Visits

From our experience providing in-home reunification services, frequent home visits are a successful strategy to engaging families, especially during the initial stages following the reunification. Drawing

²⁹ Child Welfare Information Gateway. (2012). *Engaging families in case planning*. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. https://www.childwelfare.gov/pubs/engaging_families.cfm, (Accessed on September 2, 2014).

³⁰National Resource Center for Permanency and Family Connections, “Family Engagement: A Web-Based Practice Toolkit”. <http://www.nrcpfc.org/fewpt/index.htm> (Accessed April 28, 2014)

from the concept of differential response³¹, services following the release of an unaccompanied, migrant child from federal custody should be tailored to address the specific needs of the individual family and child, thus focusing on providing more intensive services to those with the greatest need. This would allow for maximization of available resources, improve outcomes, and prevent entry into the public child welfare system while also demonstrating cost-efficiency in service provision.

Family Group Decision-Making

A core principle of the Family Engagement approach is engaging families as “key stakeholders” in the reunification process. Having the family invested in the decision increases the likelihood of commitment to achieving service objectives post-reunification. Thus, families may be more likely to engage fully in services following the child’s release from federal custody and feel more empowered in ensuring timely follow-up in connecting the child with resources in the community. Utilizing the approach Family Group Decision Making (FGDM)³², all family members are viewed as the “experts” and are collectively involved in the decision-making process. This involvement increases the likelihood that the family will be engaged throughout the process. Family members will also have a more vested interest in working toward the goals of safety, permanency, and well-being.

It is also imperative to involve the child and family in providing valuable feedback to improve programming impacting their lives. Some state and private child welfare agencies have seen positive results from having children and parents involved on agency advisory boards and committees. Involving the family in this way, even following successful reunification and case closure, ensures the family is viewed as the “expert” and a key stakeholder in the family reunification process. Incorporating this perspective is essential to improve program performance and ensure the needs of the child and family are being addressed in the most appropriate way.

*Parent-Partner Model*³³

Several states currently implement a “parent partner model” which has been successful in promoting permanency. This model uses expertise from parents who have successfully completed the reunification process and who act as mentors to others, providing support and guidance throughout. This model would be useful for children released from federal custody to their sponsors. The sponsors could either serve as individual mentors to other sponsors, or perhaps, more efficiently provide guidance through facilitated support groups in the community to share their own experiences, share resources, and provide mutual support to other recently reunified immigrant families. Focus groups conducted after reunification with sponsors and children in Houston, Texas and Los Angeles, California indicate a strong

31 Differential response is a child welfare practice that recognizes the value of responding differently to different types of cases. Child Welfare Information Gateway. https://www.childwelfare.gov/pubs/issue_briefs/differential_response/differential_responsea.cfm

32 National Resource Center for Permanency and Family Connections, “Family Engagement: A Web-Based Practice Toolkit”. <http://www.nrcpfc.org/fewpt/index.htm> (Accessed on April 28, 2014).

33 Child Welfare Information Gateway (Washington, DC: Department of Health and Human Services, Children’s Bureau) “Jefferson County Parent Partner Program”.

https://www.childwelfare.gov/management/reform/soc/communicate/initiative/soctoolkits/resources/CO_ParentPartnerManual.pdf (Accessed on May 8, 2014).

desire for the opportunity to establish and maintain connections with others who had experienced similar migration and reunification journeys. Sponsors participating in these focus groups also reported to benefit from the opportunity to share challenges, resources, and successes related to this experience for mutual support.

Recognizing the benefits of the Family Engagement approach to ensure long-term placement stability, we recommend that all family members, including the child, sponsor, and extended family in the United States, be involved in the family reunification and placement decision-making process. This includes engaging the family from the beginning of the case process, starting with assessment during the intake phase, through the home assessment phase, and continuing post-reunification. The Home Study should include a comprehensive assessment of all family members who will be involved in the child's care plan post-release. Most importantly, any biological parents who are not the primary sponsor of the child, should be involved in the placement decision-making, regardless of whether he or she resides in the same household as the proposed sponsor. Implementing this approach will help to promote the likelihood of a successful placement and reduce the risk of placement disruption. If however, the placement is ultimately disrupted, this approach will also be beneficial in having already identified other potential kinship placement opportunities for the child. This approach may also help to promote full disclosure during the early stages of the family reunification process, with regards to the child and family's true intentions regarding where the child will reside post-release. This is especially important in situations where the biological parent has not agreed to sponsor the youth, but will be involved in a primary caretaker role and the child may ultimately end up residing with the biological parent versus the original sponsor.

Family Preservation Services

Family preservation services are short-term, family-focused services that promote safety, improve family functioning, and prepare the family to effectively respond if faced with a crisis.³⁴ The foundational principle of family preservation services is that services are provided within the context of the home environment, thus maintaining family unity when safe and appropriate.

While there are various existing approaches to implementing a family preservation service model, perhaps the most relevant to draw from is that of wraparound services, which has been rated a "Promising Practice" by the California Clearinghouse on Evidence Based Practice³⁵. Wraparound services are defined as "team-based planning process" focused on providing individualized and "family-driven care" in order to, "meet the complex needs of children who are involved with several child and family-serving systems, are at risk of placement in institutional settings, and who experience emotional, behavioral, or mental health difficulties".³⁶ Implementing a wraparound service model would be most

34 Child Welfare Information Gateway (Washington, DC: U.S. Department of Health and Human Services, The Children's Bureau, 2012). <https://www.childwelfare.gov/supporting/preservation/index.cfm> (Accessed on April 28, 2014).

35 The California Evidence-Based Clearinghouse for Child Welfare, "Wraparound". <http://www.cebc4cw.org/program/wraparound/> (Accessed on May 8, 2014).

36 National Resource Center for Family-Centered Practice and Permanency Planning, "Family Preservation Programs". http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/Family_Preservation_Programs.pdf (Accessed on May 8, 2014).

applicable to children released from federal custody who have an identified mental health or behavioral need requiring more intense monitoring and support post-reunification to promote family preservation and placement stability. Key concepts of this approach include a focus on community-based services, inclusion of the child and family in the planning process, individualized services, and cultural competency. Additionally, there is emphasis on utilizing a “strengths-based” approach to empower the family to identify and build on existing support networks.

Kinship Care Model

The Kinship Care Model is based on the approach that if a child must be removed from care of a biological parent, the most appropriate alternative placement is with another relative. This approach ensures the child is able to maintain connection with the larger family unit and is often considered as a type of family preservation, relating directly to the core values of the Catholic Church promoting the preservation of the unity and dignity of migrant families. It is also worth noting that care and protection of children by extended family members is a long-standing tradition in many cultures.³⁷ Kinship care arrangements can be either formal or informal, but are widely considered to be a positive care arrangement which allows the child to be placed in a stable home environment while maintaining family connections.

To increase the likelihood of a successful kinship placement, information from the Children’s Bureau shows that it is essential that kinship care providers receive adequate community-based supportive services³⁸. In the domestic child welfare system, kin often become caregivers following a family crisis. A similar mindset can be applied to working with children released from federal custody to adults who are not biological parents, whether the sponsor is another relative or not related to the child. Promoting trust and establishing a strong connection between the worker and family is essential to providing necessary support to kinship caregivers. They may have limited knowledge of how to access needed community resources, and require additional support post-reunification due to the child’s past experience of trauma related to family separation.

Recognizing the importance of supporting successful kinship care placements, Kinship Navigator programs assist relative caregiver to identify and access resources in their communities in order to best meet the child’s needs. Proven methods to offer support to kinship caregivers include the following:

- Education – dissemination of written communication to better prepare the kinship caregivers to parent the child and understand complex systems (i.e. the immigration court), and to share knowledge about eligibility and access to resources in the community

37 Casey Family Programs -Breakthrough Series Collaborative “Supporting Kinship Care: Promising Practices and Lessons Learned” (November 2007; series 003) http://www.casey.org/Resources/Publications/BreakthroughSeries_Kinship.htm. (Accessed on May 8, 2014).

38 Child Welfare Information Gateway (2012). *Working with kinship caregivers*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. <https://www.childwelfare.gov/pubs/kinship.pdf> (Accessed on September 2, 2014).

- Inclusion – include kinship caregivers in identifying needs and service planning, including participation in family team meeting, individualize services, and increased home visits to kinships placements

Recommendations

- ❖ The best interest of the child standard and promoting the unity of the family should be central to all decision-making.
- ❖ All procedures, protocols, and mechanisms developed should be child-friendly, trauma-informed, and administered by child welfare professionals.
- ❖ Children should be screened and assessed for their immediate humanitarian protection needs and their long-term international protection needs.
- ❖ Detention of children due to immigration status should be avoided. Children separated from their families due to migration should be included within the country’s existing child welfare framework while maintaining a model that is designed for the special needs of the foreign-born child with migration experiences. Family reunification efforts should be a priority.
- ❖ Minimum care standards should be in place which allow children the right to be in the care of family members whenever possible, and for the provision of child advocates when they are separated from family.
- ❖ If family is not available to care for the child, interim care arrangements should be in the least-restrictive setting (i.e. community-based).
- ❖ The child’s family should be engaged in the care planning for the child, regardless of location. All attempts should be made to identify family members through family tracing mechanisms and seek their input in decisions about care arrangements of the child.
- ❖ The United States should consider combining the model of refugee resettlement reception practices with the promising and evidence-based child welfare practices supported by the United States to support families with newly arriving unaccompanied children in immigration proceedings.
- ❖ For children who are reunifying with family after separation due to migration, supportive services should be provided to the family to build on its strengths, connections with community resources, and to increase protective factors to adequately care and supervise the child. Services should be provided by agencies knowledgeable of the impact of immigration status on access to services, expertise with supporting families, and understanding of immigration proceedings.
- ❖ The child’s voice, perspective, and participation is integral in their care planning. All tools, procedures, and protocols shall include the perspective of the child, and their perspective be considered in any decisions made on their behalf.
- ❖ When repatriation is in the best interest of the child, safe repatriation and reintegration should be conducted in collaboration and coordination with the child’s home government, non-governmental organizations, the child’s family, and implementing partners.
- ❖ Congress should mandate an independent evaluation of children and family-centered outcomes, stability (emotional, medical, legal) of children previously in federal custody, and areas needing additional research.

- ❖ Congress should amend the statute pertaining to SIJS to clarify that it intended to include one-parent SIJ status. SIJS is an important form of relief for children who have been abused, abandoned, or neglected, even when there is one parent available for safe reunification and care.
- ❖ Department of Homeland Security and Department of Justice should conduct child-appropriate asylum proceedings for unaccompanied children. There should be a uniform binding standard or regulation that requires all Immigration Judges, federal judges and members of the Board of Immigration Appeals to adopt a child-sensitive approach to asylum cases of child applicants.
- ❖ All unaccompanied children should have counsel appointed for their immigration case as a default measure. All children should have the benefit of representation by an attorney to ensure all available relief is afforded to them. If the child's guardian has been unable to secure legal representation, the government should provide counsel.