

Member Organizations

American GI Forum of the United States

ASPIRA Association, Inc.

AVANCE, Inc.

Casa de Esperanza

Cuban American National Council

Farmworker Justice

Hispanic Association of Colleges and Universities

Hispanic Federation

Hispanic National Bar Association

Labor Council for Latin American Advancement

LatinoJustice PRLDEF

League of United Latin American Citizens

Mexican American Legal Defense and Educational Fund

MANA, A National Latina Organization

National Alliance of Latin American and Caribbean Communities

National Association of Hispanic Federal Executives

National Association of Hispanic Publications

National Association of Latino Elected Officials

National Association of Latino Independent Producers

National Conference of Puerto Rican Women, Inc.

National Council of La Raza

National Hispanic Caucus of State Legislators

National Hispana Leadership Institute

National Hispanic Council on Aging

National Hispanic Environmental Council

National Hispanic Foundation for the Arts

National Hispanic Medical Association

National Hispanic Media Coalition

National Institute for Latino Policy

National Latina Institute for Reproductive Health

National Puerto Rican Coalition

SER Jobs for Progress-National

Southwest Voter Registration Education Project

United States Hispanic Chamber of Commerce

United States Hispanic Leadership Institute

United States-Mexico Chamber of Commerce

US-Mexico Foundation



July 16, 2014

The Honorable John Boehner
Speaker of the House
H-232, the Capitol
Washington, DC 20515

The Honorable Harry Reid
Majority Leader of the Senate
S-221, the Capitol
Washington, DC 20510

Re: Budgetary and Legislative Response to Unaccompanied Minors from Central America

Dear Speaker Boehner and Majority Leader Reid:

We write on behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of 37 leading national Latino nonpartisan civil rights and advocacy organizations, to engage the House and Senate on its budgetary and legislative responses to the arrival of unaccompanied Central American minors at the southern border. While NHLA recognizes the challenges are complex and the congressional response is evolving, we focus this letter on those matters made public to date and make clear our intent to follow up in the future because the children at the center of this public debate are members of the Latino community.

NHLA's mission calls for unity among Hispanics nationwide to provide the Latino community with greater visibility and a stronger voice in our nation's affairs, including the pressing need to respond humanely to the increase in unaccompanied minors seeking refuge in the United States from El Salvador, Guatemala, Honduras, and other parts of Central America over the last few years. NHLA will soon issue a scorecard assigning members of Congress a letter grade on their immigration policy record to provide Hispanic voters and other interested voters a clear picture of elected officials' positions on immigration reform. **Our forthcoming scorecard will place significant weight on the budgetary and legislative response to the issues regarding unaccompanied Central American minors.**

Many recent statements from members of Congress appear to give short shrift to the individualized review each unaccompanied minor from a non-contiguous country is owed under current law. Executive Branch officials, in recent days, called for "greater flexibility" to treat unaccompanied Central American minors in a similar fashion as unaccompanied Mexican children under the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, without acknowledgement of the troubling track record of Customs and Border Patrol in the treatment of Mexican minors. Moreover, recent public pronouncements from the White House that "most" of the children "will be deported" and that Central American cases will be shifted to "the front of the deportation line" are deeply troubling to the Latino community. Deterrence cannot and should not come at the expense of due process, fairness, and compassion for children and humanitarian concerns.

The increase of unaccompanied immigrant minors, including those from Central America, is a serious refugee issue and must be dealt with in accordance with the nation's long legal tradition of treating children differently under immigration laws due to their particular

vulnerability, reduced capacity, and lessened culpability. This is a humanitarian crisis with refugees fleeing rampant violence in their home countries. Hasty, haphazard deportations and prolonged, substandard housing of children are not solutions to this incredibly volatile and sensitive issue. Our coalition of national Latino organizations and networks urges Congress to:

Preserve Due Process and Other Existing Legal Safeguards Protecting Children: NHLA is particularly concerned that Congress will consider amending the TVPRA or otherwise circumventing the protections enshrined in the TVPRA. Before 1997, the United States provided no special protection to detained children, often commingling children with adults in prison-like facilities, which led to severe mistreatment and lawsuits. Legal settlement and congressional action overhauled how the United States treats unaccompanied minors. The “General Policy Favoring Release” of children to relatives in the United States and the 72-hour transfer to the Office of Refugee Resettlement within the Department of Health and Human Services, solidified by the passage of the Homeland Security Act of 2002 and the TVPRA, reflect a carefully balanced solution that serves the best interest of the child and our nation.

On June 30, 2014, the President asked Congress to provide “additional authority to exercise discretion in processing the return and removal of unaccompanied minor children from non-contiguous countries like Guatemala, Honduras, and El Salvador.” While Executive discretion in immigration matters is historically available and appropriate, such discretion must not diminish existing safeguards like those codified in the TVPRA.

On July 8, 2014, the President sent a \$3.7 billion budgetary request to Congress,¹ including both provisions that show promise but that raise implementation concerns and other provisions that NHLA flatly opposes. For example, NHLA does not support any budgetary provision to allow the Executive Branch to divert appropriated funds from services for the minors to enforcement efforts. While the provisions to increase the number of immigration judges and funds for direct legal representation appear promising, the details as to how these funds would be administered remain a key concern.

Press reports from July 8, 2014, however, state that the White House’s legislative proposal to amend the TVPRA will move on a separate track from the spending request. Members of Congress, however, have announced and/or introduced various bills to similar effect in advance of the White House’s legislative response including: (1) Senator Jeff Flake’s Amendment 3527 to S.2363, the Bipartisan Sportsmen’s Act of 2014 (to amend the TVPRA to allow for the expedited removal of unaccompanied minors); (2) Senator John Cornyn’s and Representative Henry Cuellar’s so-called HUMANE Act (to treat unaccompanied minors from Central America the same as unaccompanied minors from Mexico); (3) S.2600 from Senator Mike Johanns and Senator Deb Fischer (to require the federal government to notify state officials if unaccompanied minors are placed in their states); (4) Representative Matt Salmon’s H.R.5053, the so-called Expedited Family Reunification Act of 2014 (to treat unaccompanied minors from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and any other foreign country that the Secretary of Homeland Security determines appropriate the same as unaccompanied minors from Mexico); and (5) legislation from

¹ The budget request includes: \$1.83 billion for the care for unaccompanied children; \$1.1 billion for detention and removal of unaccompanied minors; \$116 million for transportation; \$109 million for other enforcement efforts; \$393 million for Customs and Border Protection ; \$39.4 million for air surveillance capabilities; a provision to allow up to 30 percent of funds to be shifted through reprogramming with 15-day notice to Congress; \$62.9 million for more immigration judges and court support services; \$2.4 million to expand legal orientation programs; \$15 million for direct legal counsel to unaccompanied children; \$1.1 million to hire additional immigration litigation attorneys; \$5 million for media campaigns to discourage immigration in Central American countries; and \$295 million for repatriation of removed migrants.

Representative Lee Terry (to direct Executive Branch agencies to report to Congress on how many unaccompanied children have entered our country). Other members of the House and Senate have called for an “enforcement first” response, including deployment of the National Guard to the southern border and passage of Representative Michael T. McCaul’s H.R. 1417, the Border Security Results Act.

To be clear, NHLA opposes any plan, including the aforementioned, to weaken the text or undermine the spirit of the TVPRA and other related legal protections made available to immigrant minors.

Furthermore, NHLA strongly objects to any attempt to offset the cost of the President’s funding request by restricting access to the Child Tax Credit or Earned Income Tax Credit for individuals that file tax returns using Individual Tax Identification Numbers for themselves or their children. Moreover, NHLA adamantly opposes any attempt to treat immigrants from Latin America less favorably than immigrants from elsewhere in the world.

NHLA calls on Congress to use its oversight powers to hold the Executive Branch to account for possible violations of the TVPRA and other due process norms. Press reports call into question whether the Departments of Homeland Security and Health and Human Services have complied with the 72-hour transfer requirement and afforded unaccompanied Central American minors prompt placement in the least restrictive setting. NHLA is concerned that the Department of Justice will strain our immigration adjudication systems and complicate backlogs by moving unaccompanied Central American minor cases to the front the queue while leaving others to languish further in detention awaiting their day in court. **NHLA opposes any prioritization of removal based upon national origin as inconsistent with our national anti-discrimination values.**

Strengthen Systems that Protect Children: NHLA strongly encourages Congress to afford these children the due process, humanitarian relief, and special consideration owed to children, including redoubled efforts to find these children more suitable housing and screenings for asylum, Special Immigrant Juvenile Status, and T- and U-nonimmigrant visas. Such screening must be done carefully and deliberately to ensure that eligible minors are not lost in the system and erroneously deported back to the dire conditions that triggered their migration. Furthermore, Congress should use its oversight powers to ensure that the Executive Branch employs humane, effective, and fiscally sound forms of enforcement and monitoring, including placing unaccompanied children with United States-based family members and in other alternatives to detention.

Provide Counsel to Unaccompanied Minors: A minor adequately speaking for herself, without the assistance of counsel, in an adversarial hearing is a legal fiction and factual impossibility. To that end, we strongly encourage Congress to expand these protections by fully supporting H.R.4936, the Vulnerable Immigrant Voice Act of 2014, which would provide legal counsel, at no cost, to unaccompanied minors during immigration proceedings.

Prioritize the Best Interests of the Child: The best interests of the child should remain a central component of the federal government’s response to unaccompanied minors. The Department of Homeland Security currently has the authority to exercise prosecutorial discretion to consider the best interests of the child in making enforcement-related decisions, including in commencing an enforcement proceeding, initiating administrative closure or termination of a removal case, and making an eligibility determination for immigration relief. NHLA does not support the notion that deportation of minors who have run away from acute violence is an adequate solution if the best interests of the child appropriately drive the response of

the federal government, particularly where United States policies may have contributed to the violent conditions driving migration.

It is not lost on NHLA that the recent interest, from the White House and Congress, in overhauling how the United States handles and houses unaccompanied minors comes at a time when the face of unaccompanied minor migration has become increasingly more Latino. Exemplified by the Supreme Court's decision in *Korematsu v. United States*, the United States has a troubled legacy of targeting specific racial and ethnic minorities in an effort to undermine civil rights and due process protections owed. The United States must not repeat the mistakes of the past by replacing the internment camps of the 1940s with today's immigrant detention facilities for Central American minors.

Congress has a moral and legal obligation to address this crisis in a manner that reflects the principles of fairness and due process that underlie our nation's judicial process, federal laws, and Constitution. NHLA urges Congress to act accordingly with regard to the unaccompanied minors from Central America. Please contact NHLA through James A. Ferg-Cadima, with MALDEF, at jferg-cadima@maldef.org, or Bertha Guerrero, with the Hispanic Federation, at bguerrero@hispanicfederation.org. Thank you for your time and consideration.

Sincerely,



Thomas A. Saenz
MALDEF, President and General Counsel
NHLA Immigration Committee Co-Chair



Jose Calderón
Hispanic Federation, President
NHLA Immigration Committee Co-Chair



Antonio R. Flores
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NHLA Immigration Committee, Co-Chair



Oscar Chacón
National Alliance of Latin American and Caribbean
Communities, Executive Director

Cc: The Honorable Eric Cantor, House Majority Leader
The Honorable Kevin McCarthy, House Majority Whip
The Honorable Nancy Pelosi, House Democratic Leader
The Honorable Steny Hoyer, House Democratic Whip
The Honorable Xavier Becerra, House Democratic Caucus Chair
The Honorable Mario Diaz-Balart, Congressional Hispanic Conference Chair
The Honorable Rubén E. Hinojosa, Congressional Hispanic Caucus Chair
The Honorable Harry Reid, Senate Majority Leader
The Honorable Richard J. Durbin, Senate Majority Whip
The Honorable Robert Menendez, Congressional Hispanic Caucus
The Honorable Mitch McConnell, Senate Minority Leader
The Honorable John Cornyn, Senate Minority Whip
Members of Congress