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***Best Interest of the Child Determinations for
Unaccompanied and Separated Children in the United States***

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The United States Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS) is the largest voluntary agency in the U.S. resettling refugees from around the world. USCCB works with a network of over 110 local resettlement and foster care programs to administer programs for refugees, victims of trafficking, individuals with asylum, Cuban and Haitian entrants, unaccompanied refugee children, and unaccompanied children in immigration proceedings. At the national level, our agency has many initiatives related to immigration reform and other advocacy efforts for migrating people, technical assistance and outreach programs, as well as pastoral care for migrants.

My presentation addresses how the *UNHCR Guidelines on Formal Determinations of the Best Interest of the Child* are implemented within the context of the United States for unaccompanied and separated children and the steps needed to improve the protection for these children. In particular, I will highlight how the non-governmental Field Coordination program, administered by the Lutheran Immigration and Refugee Service (LIRS) and the United States Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS), is an example of providing best interest assessments for unaccompanied children in federal custody.

While the UNHCR office in the U.S. is very engaged with unaccompanied children's issues in general and liaisons frequently with the relevant government agencies, the UNHCR does not have a formal role in any formal best interest determination process for unaccompanied children within the U.S. context. However, there are many parallels between the UNHCR BID guidelines and processes and the NGO administered Field Coordinator program. While there is no official recognition by the U.S. government of the new UNHCR BID guidelines as a basis for best interest assessment for unaccompanied children, there are many ways in which the Field Coordinator program incorporates the principles and procedures of the guidelines within the program.

Recent history and change in care responsibility for unaccompanied children

Until recently in the United States, the immigration enforcement agency of the U.S. federal government was responsible for custody, care and removal of unaccompanied and separated children who were unlawfully present in the U.S. Several human rights organizations, including Human Rights Watch, Amnesty International, and the Women's Commission for Women and Children issued reports on the mistreatment of children in federal custody. USCCB and LIRS also testified before Congress about concerns regarding the care of unaccompanied children in federal custody. One complaint about this system of care, among many concerns, was that

immigration enforcement officials with no child welfare background were charged with care and placement decisions of unaccompanied children.

With the passage of the recent Homeland Security Act, the responsibility for custody and care of unaccompanied children was transferred to the Office of Refugee Resettlement within the Department of Health and Human Services in March of 2003. This federal system of care provides for temporary care arrangements of unaccompanied children who have been apprehended by law enforcement officials because of their unlawful presence in the United States. With this change in government custodian were many improvements in care, including a shift to increased options for less restrictive care environments and an increased focus on the mental health needs of children in care.

The Field Coordinator Program- an Important Role in Best Interest Assessment in the U.S. for unaccompanied children in custody

One important shift in this transition includes the development of the Field Coordinator program, a program funded by the U.S. government but administered by USCCB and LIRS.

Field Coordinators are child welfare professionals who have experience working with immigrants and refugees and who typically have graduate level degrees in fields such as social work, counseling and other related fields. Many have experience working with traumatized children separated from family members. The national offices of USCCB and LIRS provide ongoing administration and coordination for the Field Coordination program, including systems advocacy and program development.

The Mission and Vision Statements of the Field Coordinator program demonstrate the paradigm in which the program staff operates:

“The Mission of the Field Coordinator program is to utilize a holistic approach in serving the best interests of unaccompanied children who enter the United States. We strive to promote the care, safety, and well-being of these vulnerable children by ensuring that each child has access to a physically and emotionally safe environment, receives timely and consistent support services and care, and has the opportunity to participate in the decisions regarding their futures.”

“We envision a Field Coordinator program that supports and encourages child welfare best practices and promotes the long-term stability and quality of life for unaccompanied children. We envision a program whose partnerships, services and advocacy efforts honor and uphold the rights of the child in care”.

Each Field Coordinator is regionally based in key cities where large numbers of children are housed and monitors the placement of the children. They operate as a third-party entity to make recommendations to the custodian, the U.S. Government, for the best placement and family reunification decisions for individual children in care.

The UNHCR Guidelines define a “best interest assessment” as a part of a “continuous process in which the best interests of the child are pursued continuously as the overall goal of any interventions made on behalf of an unaccompanied or separated child throughout the

displacement cycle”. Field Coordinators are able to provide this role for unaccompanied children in custody through their responsibilities for providing placement/transfer recommendations, working with providers to continuously assess the level of care needed for each child and providing recommendations regarding applications for release to sponsors in the U.S. As a third-party entity, the Field Coordinator program also allows for the monitoring of temporary care arrangements, another aspect of best interest assessment within the UNHCR guidelines.

In carrying out their various roles and responsibilities, the Field Coordinators have access to key assessments used in working with the children which include information about a child’s migration and reason for entering the U.S., family history and connections in the United States and nature of relationships, mental and physical health assessment and treatment within a short-term setting, assessment for the possibility of trafficking, and the individual needs and wishes of the child.

Interviews with Children by Third-Party Child Welfare Specialist

The Field Coordinator program allows for a third-party interview with children before release, particularly with children with special protection needs. As the UNHCR BID guidelines state, interviews with a child play a central role in the best interest determination process. Within the U.S. context for children in custody, interviews allow the Field Coordinator to know the child’s thoughts and feelings in order to properly assess the impact of release on a child to a proposed sponsor or the transfer to a different care provider within the national care system. Interviewing of unaccompanied children in the U.S. context is of particular importance given the system’s stated outcome measure of expedited releases. While in a refugee camp situation, the time frame parameters for a durable solution may take over a year, in the U.S. context, best interest assessment operates within weeks as there often are pressures to release children from custody. When care provider’s funding and system capacity concerns are connected to expedited releases, there is sometimes a disincentive to share information with the Field Coordinator who is there to identify the special needs of the child. This emphasizes for us one reason why a third-party individual who can meet with children is crucial to the system of determining placements of unaccompanied children.

Recommendations for temporary care arrangements

The UNHCR BID guidelines state that the best interest of the child must be instilled in any decisions regarding the determination of the most appropriate temporary care arrangements. In the U.S. context, the Field Coordinators play a vital role in providing such recommendations for best interest in placement. As a national program, Field Coordinators remain knowledgeable of all the placement options across the United States, which include foster care, shelter care, secure facilities, therapeutic group home settings, as well as residential treatment programs. This knowledge allows them to make recommendations based on the individual needs of the child for the most appropriate temporary care arrangement, regardless of where the child may be locally at the time of identification and entry into the system. When a child may be transferred from one level of care to another, the national Field Coordinator program allows for continuity in oversight of the child’s placement as each region of the country has an assigned Field Coordinator who works with other Field Coordinators as part of a team.

Family and Sponsor Release Recommendations

A key consideration for best interest assessments within the UNHCR guidelines is family reunification. In the U.S. context “tracing”, a key consideration in the UNHCR guidelines, is the first step in the care of unaccompanied children. Direct care staff collects sponsor information as soon as the child enters the system, from relatives and sometimes non-relatives, seeking physical custody of the unaccompanied child. The Field Coordinator bases recommendations for a child’s release on set government requirements for sponsorship as well as child welfare concerns such as the relationship of the potential sponsor, safety and well-being of the child, the ability of the sponsor to meet the individual needs of the child, and the wish of the individual child.

The following case example highlights the important role the Field Coordinator plays as a safeguard for concerns related to individual children.

Field Coordinator Case Example

In Texas, 15 year old Christina is apprehended for crossing the southern border without lawful immigration status. She is placed in a large shelter care facility with 100 other children held in custody pending release to a “sponsor” for long-term care arrangements. Jose, a “sponsor” claiming to be Christina’s cousin sends in completed paperwork to obtain physical custody of Christina. All the documented requirements were met for Christina’s release to her “cousin”, including affidavits of support, proof of income, and a cleared background check. Both Christina and her mother verify that Jose is her cousin and confirm a desire for her to be released to him. The designated Field Coordinator investigates the case further by interviewing proposed household members living with Jose and asking further questions to Christina and Christina’s other family members. In this process, it is discovered that Jose is not a relative and in reality is an adult male friend of a friend living over a garage, rented from another unrelated family. In this case, the girl’s mother was also involved in misrepresenting the relationship. The girl admitted that she had met Jose over the phone, and that Jose had promised to “marry her”. The Field Coordinator pursued other family reunification options or long-term care arrangements for Maria.

Field Coordinator Program Role as Advisors to the System of Care

Although not directly addressed in UNHCR BID guidelines, a key role in protection and care of unaccompanied children is working toward continued improvements for the system. A key role the Field Coordinator program plays is to advise the U.S. government about gaps in care in the system and provide recommendations for improvement. For example, due to lack of capacity and coordination challenges, the Field Coordinators observed pregnant girls and very young children placed in large shelter care facilities housing mainly 15-17 year old adolescents. The Field Coordinator program was able to advise the system on which placements were suitable for such children and work toward minimizing inappropriate placements.

Challenges to Durable Solutions in the U.S. System

The UNHCR guidelines state that the assessment should start from the moment of identification and should continue until a durable or long-term solution is implemented for a child. While the Field Coordinator program provides a *best interest assessment* for a short-term solution (temporary care arrangements during immigration proceedings), *formal best interest determinations* for unaccompanied and separated children toward a durable solution for

displaced children is not fully realized within the United States. Permanency in the U.S. context for unaccompanied children would not be achieved for many children due to a number of challenges.

Lack of follow up and information about children post-release in the U.S.

There is a lack of information about whether the recommendations of the Field Coordinators and the subsequent decision by the federal government to release a child resulted in permanency for the child due to lack of follow up with a child's situation post-release. The U.S. system allows for the identification of short-term options, placements while in custody or with an appropriate sponsor in the U.S. Decisions are not made in the context of pursuing a long-term durable solution, where the child may be cared for long-term with a consistent care giver and with immigration relief protection. There is a presumption that the needs of the child will be met, within the placement with the related or non-related adult, who may or may not have lawful status in the U.S., or that the local community will meet the needs of these children and families. No one knows if these presumptions are correct.

While many unaccompanied children join relatives in the U.S., many remain *separated* children, separated from both parents but in the care of other adults. However, there is a lack of research of child well-being and outcomes for unaccompanied children who are released from custody within the U.S. Only the Department of Homeland Security, which has a stated mission to remove individuals with unlawful presence, follows one outcome- presence in immigration court proceedings. We know the developmental needs of the child, as presented in the UNHCR BID guidelines, are addressed for children while in federal custody. We have little information about the long-term well-being due to limited follow up services and no research.

Lack of holistic approach to family reunification options

Field Coordinator recommendations are limited to assessing family reunification within the United States, not determinations of a durable solution which assesses options in the country of origin as well as the U.S. Many unaccompanied children in custody are returned to their country of origin. There is no system to truly assess whether it is in the child's best interest to return to her country of origin. There are no home studies or organized follow up services upon return. Cross border collaboration often is ad hoc and informal. For example, a Field Coordinator or an attorney calls a representative of the non-government organization, Casa Alianza, in Guatemala because a particular child being removed from the U.S. is at risk of life in the streets without protection. There is only anecdotal information about what happens to children who are removed from the United States. But we do know anecdotally about at least one child who was killed by gangs in his home country when he was forcibly removed from the U.S. despite his claim that he would be killed if returned.

There is a need for an international program which will include the ability to ensure a safe return with preparation and follow up and child well-being in the home country. This would need increased international collaboration among government and non-government organizations to accomplish this.

Participation of the Field Coordinator program is limited to the unaccompanied children in federal custody. It does not include the many children who may remain in the custody of the Department of Homeland Security as “witnesses”, or children who are released immediately from the border patrol stations with “sponsors” and separated children who are with other care providers but separated from parents. Immigration law enforcement officials are usually the individuals identifying a child as unaccompanied. These officials typically aim to determine whether a child is separated or unaccompanied. This is an important determination, since many children are smuggled or trafficked into the United States. Mis-identification of a child as being with their designated parent or guardian when the child is in the hands of a criminal element is a serious protection concern. We do not know how effective immigration officials are in identifying such children.

A child’s permanency and durable solution may be tied to immigration relief. If the best interest of the child is to remain in the United States, her right to remain is tied to the immigration relief options available. Typical relief options for children other than the family immigration system include asylum, visas for victims of trafficking, and special immigrant juvenile status (SIJS). Of the immigration relief options, SIJS was the one status established primarily on child welfare considerations. With a child pursuing this immigration option, a state juvenile or family court must make a determination that the child is abused, abandoned, and neglected; eligible for long-term foster care/placement; and that it is in the child’s best interest to remain in the U.S. However, even if a child is granted SIJS based on the above grounds, she is not typically provided care by States or the federal government due to jurisdictional conflicts. She is not a child eligible for federal refugee benefits although frequently in federal custody when the status is obtained and State child protective services typically will not receive such children into care, viewing them as federal responsibilities. The result is an abandoned, abused, and neglected child, with legal status, but without care unless “good Samaritans” step in to assist the child.

Action Steps to Create Durable Solutions for Unaccompanied and Separated Children in the United States.

There are several systemic changes which would need to occur to truly incorporate formal determinations of the best interests of unaccompanied and separated children in the United States.

1. Continue to train and educate the system, including NGO staff and government entities, on how UNHCR guidelines can be implemented in the U.S. context. Encourage recognition of the UNHCR guidelines as principles which apply to unaccompanied/separated children in the United States. Ensure that all unaccompanied and separated children identified by immigration officials have child welfare specialists reviewing their situation to make best interest determinations regarding care and placements.
2. Conduct research about how separated children are fairing in the United States. There is no research available about what happens to the thousands of children released from federal custody each year to sponsors pending their immigration court proceedings. Do they remain with their sponsors? Do they obtain immigration relief? Do they remain in a safe and appropriate placement? Do they go to school and/or work? Were the release decisions in the best interest of the child? Answers to these questions could inform policy and affect change where needed.

3. Implement a guardian ad litem program for children in immigration proceedings which is recognized by the U.S. Immigration Court system. The use of guardians ad litem is another means to ensuring that the voice of the child is brought into the key court decisions made on their behalf. Unlike the immigration attorney, the guardian ad litem could focus on how different immigration relief options would serve or not serve the best interests of the child. Implementing a guardian ad litem program recognized by the court likely would need a legislative change.

4. Allow children with special immigrant juvenile status (SIJS) to access refugee child benefits to end the gap in care for these children.

5. Create laws to hold the governments accountable for the welfare of children who they seek to remove from the United States. Create legislative language consistent with UNHCR guidelines which would incorporate a responsibility for the safe repatriation of children.

For example, S. 1129, “Unaccompanied Alien Child Protection Act of 2003”, Section 104, included the following provision:

“The United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children”. The legislation included a provision that the U.S. government must report to Congress on efforts to repatriate unaccompanied alien children, including information on the number of children removed from the U.S., the type of immigration relief sought and denied, the nationality and age of the children removed, and the steps taken to ensure that such children were safely and humanely repatriated to their country of origin. If governments were held accountable for what happens to a child based on its decisions, there would be more incentive to create a system of best interest determinations consistent with UNHCR guidelines.

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