



Testimony

Of

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**House Judiciary Subcommittee on
Immigration and Border Security**

**"The Impact on Local Communities of the Release of Unaccompanied
Alien Minors and the Need for Consultation and Notification"**

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I am Kristyn Peck, Director of Children's Services within the U.S. Conference of Catholic Bishops' (USCCB) Department of Migration and Refugee Services. I testify today in opposition to H.R. 5409, H.R. 5253, H.R. 5138, and H.R. 5129.

I would like to thank Chairman Trey Gowdy (R-SC), Ranking Minority Member Zoe Lofgren (D-CA), and other committee members participating in this hearing for the opportunity to testify today. I note that the protection of migrant children is an especially important issue for the Catholic Church, as one of Jesus' first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Indeed, Jesus, Himself, was a child migrant fleeing violence. Jesus, Mary, and Joseph were asylum-seekers. They faced the same choice as the one facing thousands of children fleeing to the United States each year.

Mr. Chairman, USCCB has been a leader in the protection of and advocacy for this vulnerable population. The Catholic Church in the United States has played a critical role in the care of unaccompanied children. By virtue of its organizational structure and geographical reach, the U.S. Catholic Church early on has assumed a strong leadership role in the treatment and service of unaccompanied children.

Since 1994, USCCB has operated the Unaccompanied Alien Children or "Safe Passages" program. This program serves undocumented children apprehended by Department of Homeland Security (DHS) and placed in the custody and care of the Office of Refugee Resettlement (ORR), within the Department of Health and Human Services (HHS).

Through cooperative agreements with HHS/ORR, and in collaboration with more than 210 community-based social service agencies, the program provides short-term and long-term foster care to unaccompanied children in HHS/ORR custody, home studies of sponsors prior to the release of children, and post-release services to children released from HHS/ORR custody to their families. Services received by children served in the Safe Passages foster care programs through our cooperative agreement with HHS/ORR include food, a safe placement with a foster family licensed by the state, clothing, medical and mental health screening and care, and education, provided by the foster care agencies on-site. In fiscal years 2011—2014 (October 1st, 2010– September 30, 2014), the USCCB/MRS Safe Passages program served 3,781 youth who arrived as unaccompanied alien children—2,446 through its Family Reunification Program and 1,335 through its foster care programs. USCCB/MRS's Safe Passages program expanded this fiscal year to include direct legal representation for 1,250 children released from HHS/ORR custody and Child Advocacy services for 250 of these children.

As you know, Mr. Chairman, USCCB testified before your committee on June 25, 2014, on the influx of unaccompanied children into our country. At that time, our testimony outlined steps we believe the nation should take to protect these children and to ensure that they are not sent back to danger in their home countries. With your permission, Mr. Chairman, I would like to re-submit our testimony from that hearing for today's record. Today, I would like to specifically address the pieces of legislation which are the subject of this hearing.

Mr. Chairman, let me say upfront that the U.S. bishops acknowledge the right of our nation to control its borders, as well as acknowledge the public policy purpose that is served by ensuring that states and local communities are informed when large numbers of humanitarian migrants are placed in their jurisdictions. As I will outline, however, we have grave concerns with giving State and local jurisdictions the right to veto such placements.

Mr. Chairman, we disagree with the premise of these bills, namely that these vulnerable unaccompanied children are a threat or burden to our communities. Although we understand the interest of the Committee in keeping our communities safe, as we have stated before to this committee, these children are fleeing for their lives and are seeking safety and protection in our great nation.

As our testimony will outline, rather than passing the strict regimes embodied in these three bills, we recommend that—

- First, Congress should resource the immigration court system by providing more immigration judges and attorneys to both adjudicate cases and to represent them in their hearings. This would ensure that these children receive due process in a much shorter time frame without undermining their rights. Some would be sent back to their home countries, while others would be able to begin to integrate into their local communities.
- Second, post-release services for children should be expanded. Currently, Mr. Chairman, only 10 percent of children placed in families receive post-release services. These services include apprising them of their rights and ensuring they attend their hearings, but also that children are protected in the family and community setting. These services also include preparing children to attend schools and working with schools to help prepare them to accept the children.
- And third, the best interest of the child principle should be the cornerstone of decision-making affecting children's lives—to include their placements and throughout the legal process. These children are particularly vulnerable and adhering to this principle would ensure that their needs are met and they could become contributing members of their new communities, assuming they receive immigration relief.

A Refugee Crisis

The United Nations High Commissioner for Refugees (UNHCR) found that “58 percent of the 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.”¹ This finding is consistent with what a delegation from USCCB, of which I was a member, found in a trip we took to Central America in November 2013 to look at root causes of child migration. We found that although the causes were complex and differed slightly by country, that “one overriding

¹ 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.

factor has played a decisive and forceful role in recent years: generalized violence at the state and local levels and a corresponding breakdown in the rule of law have threatened citizen security and created a culture of fear and hopelessness.”² In fact, many of these children are eligible for protection under our laws. Finally, all who are released from federal custody are in deportation proceedings, known to the Department of Homeland Security, and have received medical and psychosocial screenings, and were determined to be safe to release to our communities. They should not be viewed as a threat or burden, but rather welcomed and protected, consistent with our nation’s heritage as a safe haven for the persecuted.

Positive Impact on Communities

Unaccompanied children positively impact communities by providing opportunities for local employment and provision of services (to include contracts for food service and social workers to oversee the caseloads), and by encouraging local partnerships with immigrant and youth serving agencies; legal, medical and mental health agencies; volunteer groups; and faith communities.

Throughout our network, we have shining examples of such successful community partnerships, including in high-release locations, demonstrating a positive community response to unaccompanied children.

Examples include unaccompanied children served by Catholic Charities of the Archdiocese of Galveston/Houston volunteering at a local senior center; a medical and legal partnership through Catholic Charities of the Archdiocese of Manhattan which co-locates legal, mental and medical health services for unaccompanied children; and trainings and meetings conducted by USCCB with school systems in the Washington, D.C. suburbs to provide education on the unique needs of unaccompanied children and share resources for schools.

We find that when communities learn more about unaccompanied children and have the opportunity to interact with them, they are richer because of it.

Information and Transparency

We respect and understand state and local communities’ need for information and transparency about facilities caring for unaccompanied children for planning and budgetary purposes. We believe, however, that there are already existing mechanisms for this information sharing.

The Office of Refugee Resettlement (ORR) of Health and Human Services (HHS) notifies state and local governments of proposed facilities for the purpose of licensing. Moreover, state and local governments already have the authority to host public hearings on the subject, yet, three of the bills require it and impose a waiting time before the hearing can be held, which would unnecessarily delay approval of facilities. And lastly, HHS/ORR publishes information of children released by county on a regular basis.

² 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.

We are concerned that the impact of these bills would be to stir up local animus against vulnerable children seeking refuge and delay, and in some cases, prevent, the federal government's ability to approve facilities, impacting the efficiency of the federal system of care for unaccompanied children and resulting in children spending more time at Customs and Border Protection facilities that are not designed nor equipped to care for children.

Due to the proposed waiting times before public hearings could be held, and, for one of the bills, screenings and background checks of children required before the hearings take place, these bills would keep children in border facilities and place an undue burden on Customs and Border Protection agents who, instead of enforcing our immigration laws, would need to divert their attention to providing for the custody and care of unaccompanied children in their facilities. The bills would also add costs and bureaucracy to the current system. Most importantly, in addition to the cost and inefficiency, detaining children is inhumane, detrimental to their health, and contradictory to child welfare principles, adopted and promoted by our U.S. domestic child welfare system, that children should be placed in the least restrictive setting. In fact, detaining children can cause the development of psychiatric difficulties, with children and adolescents in detention experiencing increased rates of self-harm and suicidal behavior, voluntary starvation, severe depression, sleep difficulties, anxiety, and post-traumatic stress reactions. (See Fazel, Mina; Unni Karunakara; and Elizabeth A. Newnham; "Detention, denial and death: migration hazards for refugee children," *The Lancet Global Health Journal*, Volume 2, Issue 6, June, 2014.)

More specifically, we oppose these bills for the following reasons:

- **H.R. 5409/H.R. 5253:** These bills are similar in nature and would require the Governor and/or County to approve the placement of a facility sheltering these vulnerable children in the jurisdiction. They would require the Governor (H.R. 5253) or the Governor and County (H.R. 5409) to approve the placement of the facility in their jurisdiction within 14 days (7 days for the governor's approval and then another 7 days for the county's approval for H.R. 5409) or 10 days for the governor's approval (H.R. 5253) following the conclusion of a hearing on the issue. If the Governor (H.R. 5253) or Governor and County (H.R. 5409) do not grant approval within the 10-14 day period, then the Department of Health and Human Services (HHS) would be unable to proceed with the grant or contract constructing the facility.

Mr. Chairman, there are several problems with these bills. H.R. 5409, for example, would require the performance of health screenings, vaccinations, and background checks on children prior to their placement in the jurisdiction. Therefore, these screenings, vaccinations, and background checks would no doubt have to be performed at the border, placing extra burdens on Customs and Border Protection and keeping vulnerable children in restrictive and temporary settings for a much longer period than the 72 hour maximum.³ Both bills require a hearing no earlier than 40 days (H.R. 5409) and 90 days (H.R. 5253) prior to the approval of the grant/contract, also keeping children in border facilities and further burdening Customs and Border Protection. Finally, the bills would permit some States or Counties to opt out of housing these vulnerable children, placing more burdens on those jurisdictions which are welcoming to them. Such a responsibility,

³ Currently required by §235(b)(3) of the TVPRA (2013)

consistent with current law, should be shared by all States and Counties of the United States, not just a few which are willing to accept this responsibility.

- **H.R. 5138:** H.R. 5138 would require consultation with State and local elected officials on the location of a child facility in their jurisdiction and a public hearing on the issue “no earlier” after notification of the placement of the facility. Again, such a 90-day requirement would delay the placement of these children, keeping them in substandard Customs and Border Protection holding cells and facilities for several months. Moreover, since the bill specifies facilities not on Federal property, it would facilitate or encourage the use of federal facilities such as Department of Defense bases. As you may recall, Mr. Chairman, during the influx of children this past summer, such facilities as Lackland Air Force base in San Antonio, Texas, Ventura Naval Facility in California, and Fort Sill, Oklahoma, were used to house these children. Using DOD facilities for these children is restrictive, inappropriate, and overall, not in the best interest of the child.
- **H.R. 5129:** H.R. 5129 would require a notification of the Governor of a State of the placement of a child with a custodian 48 hours prior to the placement of the child. While we are not opposed to notifying State or local governments about such placements, we would oppose the notification *prior* to the placement, as it would keep children in a restricted setting for two more days and delay the release of these children to their family members. It is worth noting, as well, that the status and release location of these children is already known to DHS prior to their release and that as a condition of their release sponsors are required to ensure these children attend their immigration hearings.

We would not oppose this legislation if the notification occurred concurrent with or after the placement is made, consistent with HHS/ORR’s current practice of compiling state by state and county by county data of unaccompanied children released to those communities and posting on their web site for public distribution. This compiled data is much more useful and a lot less cumbersome to Governor’s offices than individual notices of each and every child released, and more helpful as it compiles it county-by county.

Instead of passing these bills, Mr. Chairman, we recommend the following steps be taken by Congress to address these issues:

Robust funding should be appropriated to ensure the care of these children and families fleeing violence in their home countries. We are heartened that the U.S. Senate has added \$1.9 billion for the Fiscal Year 2015 budget to care for these vulnerable populations. Any funding should be administered in a manner that respects the religious liberty and conscience rights of organizations providing this care.

We recommend that:

- Congress appropriate \$2.28 billion for Fiscal Year 2015 for the care of unaccompanied children, consistent with the Administration’s request.

- Congress increase funding in the FY 2015 HHS budget for the unaccompanied refugee minor program to \$100 million, as some of these children will qualify for Unaccompanied Refugee Minor (URM) benefits;
- Congress appropriate \$100 million for DHS to care for families who have crossed into the United States during the duration of their legal proceedings, including alternative to detention programs, housing and other basic necessities.
- Congress should appropriate funding in the DOJ budget to provide legal representation for unaccompanied children who cannot secure representation through pro-bono networks.

Congress should mandate and fund family reunification and legal orientation programs and legal representation for all youth to help children integrate into their communities, reunify with their families, and pursue immigration relief. Often, increased funding to the Office of Refugee Resettlement (ORR), which is responsible for the custody and care of UAC, is directed at improving conditions in the temporary shelters in which unaccompanied children reside while waiting for release to their families.

There exists little funding for services once children are released, increasing the likelihood for family breakdown, the inability of children to enroll in school and access community resources, and the likelihood that the child will not show up to their immigration hearings. Funding should be directed at increasing the number of home studies provided to sponsors prior to the child's release from custody to assess any potential risks of the placement, including the protective capacity of the sponsor to ensure the safe reunification of the child. Post-release services should be required for all children to assist the family with navigating the complex educational, social service, and legal systems. With intensive and short-term case management services and monitoring by child welfare professionals, it is more likely that children will not abscond, appear at their immigration proceedings, enroll in school, and integrate into their communities—mitigating risk for future entry into the public child welfare system. In addition, when provided by community-based agencies, post-release services help build the capacity of the communities to respond as agencies establish relationships with and educate systems and service providers that will come in contact with unaccompanied children.

Funding also should be increased for the Department of Justice's Legal Orientation Program for Custodians (LOPC) which was developed to "inform the children's custodians of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking," as provided under the Trafficking Victims Protection Reauthorization Act of 2008.

Finally, Mr. Chairman, it is vital that children receive legal representation in order to navigate the complex justice system. Statistics show that as many as 60-70 percent of these children with lawyers obtain immigration relief, while only 30 percent do if unrepresented. It also would ensure that the court system is more efficient, as children would know when to appear and be cognizant of their rights and responsibilities.

We applaud the creation of a new Legal Service and Child Advocate program funding by ORR, which will assist USCCB and one other agency in obtaining lawyers and advocates for over 2,600 children.

ORR should continue to expand placement options to include small community-based care arrangements with basic to therapeutic programming. The Flores Settlement Agreement establishes minimum standards of care for children in the custody of ORR and requires that UAC be placed in the least restrictive setting that meets their needs. Save the Children notes in a study: “...recent years have seen an increasing emphasis on the development of community-based approaches... to ensure that children who lose, or become separated from their own families, can have the benefits of normal family life within the community” Placing children in the least restrictive setting that can meet their needs is the policy and practice of the child welfare system in the United States. While many of the children in ORR custody are served in basic shelters, this placement setting may not be the most appropriate for some UAC, many of whom have complex trauma needs, and would be better served in foster care placements.

The best interest of the child should be applied in legal proceedings involving UACs, including creating child-appropriate asylum procedures and unaccompanied child immigration court dockets. Currently, decisions about the welfare of UAC are made separately from the existing U.S. child welfare infrastructure, meaning that court decisions on the welfare of UAC are based on their eligibility for immigration relief alone rather than involving a comprehensive assessment of the best interest of the child.

Whenever possible, policies and procedures should be implemented that help the child progress through the system in a way that takes into account his/her vulnerabilities and age, such as the establishment of immigration court dockets for unaccompanied children and the creation of child-appropriate asylum procedures. Concentrating all UAC cases in a child-focused immigration docket with appropriately-trained arbiters and advocates will streamline UAC cases while also ensuring a less-threatening model for children.

Additionally, implementing a uniform binding standard that requires all immigration judges, federal judges, and members of the Board of Immigration Appeals (BIA) to adopt a child-sensitive approach to asylum cases of child applicants will lead to greater consistency in youth asylum jurisprudence and will also be more reflective of current international and domestic legal requirements. As mentioned, the government should provide legal representation for unaccompanied children, who would be better able to navigate the legal process and obtain immigration relief with an attorney guiding and representing them. This would also ensure that the legal process is efficient and that children and their families receive a timely response to their protection claims, enabling to better integrate into their communities.

In conclusion, Mr. Chairman, how we respond to these vulnerable children among us is a test of our moral character. America and the American people are generous and welcoming, especially as they learn more about the horrific stories of these children, and witness their courage, resiliency, and gratitude. We view them not as a burden, but as vulnerable children fleeing violence in their home communities who are in need of support and protection, consistent with domestic and international law. The bills before this committee would result in their continued

confinement in a restricted setting and undermine family reunification efforts. We ask that these measures not be acted on by either the Committee or the full House of Representatives, and we look forward to working with you and the committee on improving the system so that both their best interests and the best interests of our nation are served.

Thank you.