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The Honorable Senators Rob Portman & Tom Carper  
United States Senate  
Committee on Homeland Security & Governmental Affairs  
Permanent Subcommittee on Investigations  
Washington, DC 20510-6250

### **Re: Protection of Unaccompanied Alien Children**

Dear Senators Portman and Carper:

Thank you for the opportunity to testify before the United States Senate, Permanent Subcommittee on Investigations, regarding efforts by the Department of Health and Human Services (“HHS”) and Department of Homeland Security (“DHS”) to protect Unaccompanied Alien Children (“UAC”) from human trafficking and abuse.

I serve as the Deputy Director and Managing Attorney of the Immigration and Medical-Legal Partnership Programs at Community Legal Aid Society Inc. (“CLASI”) in Delaware. CLASI provides free immigration legal services throughout the State of Delaware to particularly vulnerable immigrants, including foreign-born survivors of domestic violence, sexual assault, child abuse and neglect, and other serious crimes. Specifically, CLASI provides consultation and representation on the following types of victim-based immigration petitions:

1. U Non-immigrant Status, or the “U Visa,” created by the Trafficking Victims Protection Act of 2000 (TVPA),<sup>1</sup> available to non-citizen, injured victims of serious crime in the United States, who demonstrate that they were, or are, cooperating with the authorities on the investigation of the crimes committed against them;
2. T Non-immigrant Status, or the “T Visa,” also created by the TVPA,<sup>2</sup> available to non-citizen victims present in the United States due to severe trafficking in persons, who demonstrate that they have cooperated with the authorities on the investigation regarding the human trafficking;
3. Special Immigrant Juvenile Status, or “SIJS,” created in 1990 and amended in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)<sup>3</sup>, available to non-citizen youth found by a state juvenile court to have been abused, abandoned, neglected, and/or dependent by one or both of their parents, and in whose best interest it is to remain in the United States in the care of the state court-appointed agency or individual; and

<sup>1</sup> The Trafficking Victims Protection Act of 2000. Pub. L. No. 106-386, 114 Stat. 1464 (2000).

<sup>2</sup> *Id.*

<sup>3</sup> INA § 101(a)(27)(J), added by § 153 of the Immigration Act of 1990, and amended most recently by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. No. 110-457, 122 Stat. 5044 (2008).



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4. Various forms of relief through the Violence Against Women Act<sup>4</sup>, available to non-citizen spouses and children of United States Citizens or Lawful Permanent Residents, who have subjected the non-citizen to battery, abuse, and/or extreme cruelty.

All of these forms of relief are available to non-citizen minors. The most common form of relief CLASI seeks on behalf of non-citizen minors in Delaware is SIJS, as by definition all of the UACs placed in Delaware have no parent or legal guardian in the United States available to provide care and physical custody.<sup>5</sup> Between October 2016 and February 2018, ORR placed 272 UACs with sponsors in the State of Delaware.<sup>6</sup> Based on CLASI's experience working with and representing UACs placed in Delaware, CLASI is concerned that the release and post-release services, particularly legal orientation and referral services, provided to UACs and their sponsors by ORR are insufficient; these concerns are also raised in the Subcommittee's report entitled *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*. CLASI has identified the following three areas related to the release and post-release services which have presented detriment to UACs placed with a sponsor in Delaware:

1. Sponsors are often unaware that they are not the legal guardian of the UAC, and are provided with no resources which refer them to agencies which may assist them with the legal custody or guardianship process;
2. Sponsors often lack information and understanding regarding the venue and importance of the UAC's hearings in Immigration Proceedings; and
3. Sponsors are often unaware and/or lack understanding regarding the UAC's ability to seek and obtain employment in the United States.

With regards to CLASI's first concern, many sponsors with whom UACs are placed speak limited English, and may not be literate in English. When the UAC is released to the sponsor, ORR indicates on the discharge paperwork, which is in English, that the sponsor must seek legal guardianship of the minor, but fails to indicate how, or where, the sponsor can begin that process in their state. The ORR discharge paperwork provided to the sponsor also indicates that a legal services referral list is enclosed, but most sponsors in Delaware have indicated that they have not received a Delaware-specific list of legal service providers. Thus many sponsors are unaware that they are not the legal guardian of the UAC placed in their care by ORR, causing issues with medical, educational, and legal decision-making. Furthermore, because of this lack of awareness, many sponsors do not know to file for guardianship of the child in the State Family Court, causing the UAC to miss a window of opportunity to petition for and obtain SIJS.

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<sup>4</sup> Violent Crime Control and Law Enforcement Act of 1994; Title IV, Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994), amended in 1996, 2000, 2006 and 2013.

<sup>5</sup> 6 U.S.C. § 279(g)(2).

<sup>6</sup> Office of Refugee Resettlement, Unaccompanied Alien Children Released to Sponsors By State, at <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>.

Moreover, because sponsors and UACs are typically unable to effectively navigate the State Family Court and immigration systems *pro se*, and are not provided with referral information to agencies where they may obtain advice and/or legal representation, many UACs are unable, or simply do not, seek immigration relief for which they are eligible in order to remain in the United States with lawful status. A lack of legal representation has a detrimental impact on the UAC's ability to successfully seek status and remain in the United States. A recent study by the University of Syracuse found that over half of the children appearing in immigration court are *pro se*, and that represented children have a 73% success rate in immigration court, as compared to only 15% of unrepresented children.<sup>7</sup> Furthermore, the study found that the vast majority of children represented by lawyers appear for their hearings in immigration proceedings.<sup>8</sup> In other words, represented UACs are more likely to appear, and are more likely obtain lawful status and remain in the United States in safety. Thus ensuring that sponsors and UACs are aware of available legal services and are effectively referred to them will likely lead to positive outcomes for more UACs in immigration proceedings.

In order to inform and educate sponsors regarding petitioning for legal guardianship and the importance thereof, CLASI recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, indicating that the sponsor should seek legal guardianship in the state juvenile court where they reside, in order to be the recognized decision-maker regarding the care and custody of the UAC. Likewise, CLASI recommends that ORR provide the sponsor with a referral list of state-specific agencies which may provide advice and representation to the sponsor and UAC on such matters. Finally, CLASI requests that ORR consider creating a policy that requires ORR to communicate with a designated state agency, indicating that a UAC has been placed in the state, and with whom, in order to ensure state-side follow-up on the UAC and their legal situation.

Second, sponsors often lack information and understanding regarding the venue and importance of the UAC's hearings in Immigration Proceedings. Again, given the language and literacy barriers faced by many sponsors and UACs, the sponsors may not understand that one of their principal tasks is to ensure the UAC's appearance at immigration proceedings.

Furthermore, many UACs are held in ORR custody at an ORR facility that is a great distance from the sponsor, and the UAC is placed into immigration proceedings at the Immigration Court based upon their ORR placement location. Often, once the UAC is released from ORR custody to a sponsor located in a different state, the venue of the UAC's immigration proceedings must be changed. In many cases, ORR does not orient regarding or assist with the filing of a motion to change venue with the Immigration Court from the jurisdiction where the child was held by ORR, to the jurisdiction to which child was released to their sponsor. This often results in missed court appearances or extremely onerous travel for the UAC and their

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<sup>7</sup> University of Syracuse, *TRAC Immigration Data*, at [http://trac.syr.edu/immigration/reports/359/include/about\\_data.html](http://trac.syr.edu/immigration/reports/359/include/about_data.html).

<sup>8</sup> *Id.*

sponsor to appear at the hearing in the original venue. For example, in a recent case, a Delaware sponsor was advised by ORR that the location of the UAC's immigration hearing was changed from the Immigration Court in Chicago, Illinois, where the UAC was held in ORR custody, to the area to which the minor moved – the Immigration Court in Philadelphia, Pennsylvania, which has jurisdiction over UACs residing in the State of Delaware. However, this information was incorrect, and the UAC and the sponsor had no way of knowing that the venue was not changed, or how to motion the court to change the venue on their own, until receiving consultation and representation at CLASI.

In order to inform and educate sponsors and UACs regarding the venue and importance of the UAC's hearings in Immigration Proceedings, CLASI again recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, indicating the importance and logistics of the UAC's Immigration Proceedings. Likewise, CLASI recommends that ORR provide the sponsor with a referral list of state-specific agencies which may provide advice and representation to the sponsor and UAC on such matters.

Third and finally, sponsors often lack information regarding the UAC's ability to seek and obtain employment in the United States. As indicated above, many sponsors face linguistic and literacy barriers that prevent them from fully appreciating the written warning, in English, which they receive from ORR at the time of the UACs release, regarding the UAC's inability to work with in the care of the sponsor. Culturally, many youth expect to work, regardless of their age or immigration ability to do so. Financially, many UACs and their sponsors feel the UAC may need to work in order provide support and payment for their journey to the United States. In order to inform and educate sponsors and UACs regarding the UAC's inability – both based on age and immigration status – to work in the United States, CLASI again recommends that ORR provide both oral and written information and orientation sessions in the sponsor's primary language, explaining why the minor cannot, and should not, work in the United States.

CLASI is grateful for the Subcommittee's willingness to learn about the legal issues and barriers faced by UACs placed with sponsors in Delaware. Thank you again for your time and consideration of this issue.

Respectfully submitted,



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