

# Unaccompanied Alien Children: An Overview

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## Summary

In FY2014, the number of unaccompanied alien children (UAC, unaccompanied children) that were apprehended at the Southwest border while attempting to enter the United States without authorization reached a peak, straining the system put in place over the past decade to handle such cases. Prior to FY2014, UAC apprehensions were steadily increasing. For example, in FY2011, the U.S. Border Patrol (USBP) apprehended 16,067 unaccompanied children at the Southwest border, whereas in FY2014 more than 68,500 unaccompanied children were apprehended. In FY2015, UAC apprehensions declined 42% to 39,970. At the close of FY2016 they increased to 59,692, roughly 20,000 more than in FY2015, and 9,000 less than the peak of FY2014. During the first two months of FY2017 (October and November, 2016), USBP apprehended 14,128 unaccompanied children. Apprehensions in the first two months of FY2015 and FY2016 were 5,143 and 10,588, respectively.

UAC are defined in statute as children who lack lawful immigration status in the United States, who are under the age of 18, and who either are without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody. Two statutes and a legal settlement directly affect U.S. policy for the treatment and administrative processing of UAC: the Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457); the Homeland Security Act of 2002 (P.L. 107-296); and the *Flores Settlement Agreement* of 1997.

Agencies in the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) share responsibility for the processing, treatment, and placement of UAC. DHS's Customs and Border Protection (CBP) apprehends and detains unaccompanied children arrested at the border. DHS's Immigration and Customs Enforcement (ICE) handles custody transfer and repatriation responsibilities, apprehends UAC in the interior of the country, and represents the government in removal proceedings. HHS's Office of Refugee Resettlement (ORR) coordinates and implements the care and placement of unaccompanied children in appropriate custody.

Foreign nationals from El Salvador, Guatemala, Honduras, and Mexico accounted for almost all UAC cases in recent years, especially in FY2014. In FY2009, Mexico accounted for 82% of the 19,688 UAC apprehensions at the Southwest border, while the other three Central American countries accounted for 17%. In FY2014, the proportions had almost reversed, with Mexican nationals comprising 23% of UAC apprehensions and the three Central American countries comprising 77%. In FY2016, Mexican nationals made up 20% of all UAC apprehensions.

To address the crisis at its peak in 2014, the Obama Administration developed a working group to coordinate the efforts of federal agencies involved. It also opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border. In June 2014, the Administration announced plans to provide funding to the affected Central American countries for a variety of programs and security-related initiatives to mitigate the flow of unaccompanied migrant children. In July 2014, the Administration requested, and Congress debated but did not approve, \$3.7 billion in FY2014 supplemental appropriations to address the crisis.

For FY2015, Congress appropriated nearly \$1.6 billion for the Refugee and Entrant Assistance Programs in ORR, most of which was directed toward the UAC program (P.L. 113-235). For DHS agencies, Congress appropriated \$3.4 billion for detection, enforcement, and removal operations, including for the transport of unaccompanied children for CBP. The Department of Homeland Security Appropriations Act, FY2015 (P.L. 114-4) also allowed the Secretary of Homeland Security to reprogram funds within CBP and ICE and transfer such funds into the two

agencies' "Salaries and Expenses" accounts for the care and transportation of unaccompanied children. The act also allowed for several DHS grants awarded to states along the Southwest border to be used by recipients for costs or reimbursement of costs related to providing humanitarian relief to unaccompanied children. Congress continued to provide base funding at comparable levels for FY2016, but did not appropriate funds for contingency funding that was requested by the Administration to address potential surges in UAC flows.

Congress has passed two continuing resolutions to fund ORR for FY2017 (P.L. 114-223 and P.L. 114-254), both of which maintain funding at levels and conditions comparable to FY2016. For both resolutions, Congress has granted HHS the authority to transfer funds from other HHS budget accounts to address higher than anticipated caseloads. The second CR also contains a special "anomaly" provision authorizing HHS to transfer \$300 million to fund ORR programs dedicated to unaccompanied children as of February 1, 2017. After March 1, 2017, if the UAC caseload for FY2017 exceeds by 40% the UAC caseload for the comparable FY2016 period, the CR will appropriate an additional \$200 million in new funding.

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## Background

After several years of increases, the number of unaccompanied alien<sup>1</sup> children (UAC) apprehended at the Southwest border by the Department of Homeland Security's (DHS's) Customs and Border Protection (CBP) peaked at 68,541 in FY2014. Some Members of Congress as well as the Obama Administration have characterized the issue as a humanitarian crisis.<sup>2</sup>

The reasons why they migrate to the United States are often multifaceted and difficult to measure analytically. The Congressional Research Service (CRS) has analyzed several out-migration-related factors, such as violent crime rates, economic conditions, rates of poverty, and the presence of transnational gangs.<sup>3</sup> CRS also has analyzed in-migration-related factors, such as the search for economic opportunity, the desire to reunite with family members, and U.S. immigration policies.

Some have suggested that the sizable increase in UAC flows in recent years results from a perception of relaxed U.S. immigration policies toward children under the Obama Administration.<sup>4</sup> These critics also cite a 2008 law<sup>5</sup> that treats UAC from contiguous countries differently than those from noncontiguous countries (see the section "Customs and Border Protection").

Unaccompanied alien children are defined in statute as children who: lack lawful immigration status in the United States;<sup>6</sup> are under the age of 18; and are without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody.<sup>7</sup> They most often arrive at U.S. ports of entry or are apprehended along the southwestern border with Mexico. Less frequently, they are apprehended in the interior of the country and determined to be juveniles and unaccompanied.<sup>8</sup> Although most are age 14 or older, apprehensions of UAC under age 13 have increased.<sup>9</sup>

<sup>1</sup> *Alien*, a technical term appearing throughout the Immigration and Nationality Act (INA), refers to a foreign national who is not a citizen or national of the United States.

<sup>2</sup> Senate Judiciary Committee hearing on *Oversight of the Department of Homeland Security*, June 11, 2014 (hereinafter referred to as *Senate Oversight Hearing*).

<sup>3</sup> See CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*.

<sup>4</sup> These critics often cite the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744, 113<sup>th</sup> Congress), passed by the Senate in 2013, which would allow certain unlawfully present aliens to adjust to a lawful immigration status; and the administrative policy entitled Deferred Action for Childhood Arrivals (DACA), which grants certain aliens who arrived in the United States as children prior to a certain period some protection from removal for at least two years. For an example of these arguments, see U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 11, 2014. For a discussion of S. 744, see archived CRS Report R43099, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S. 744*. For a discussion of DACA, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*.

<sup>5</sup> The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).

<sup>6</sup> The child may have entered the country illegally or been admitted legally but overstayed his or her duration of admittance (i.e., a visa overstay.)

<sup>7</sup> 6 U.S.C. §279(g)(2). Although these children may have a parent or guardian who lives in the United States, they are classified as unaccompanied if the parent or guardian cannot provide *immediate* care.

<sup>8</sup> A juvenile is classified as *unaccompanied* if neither a parent nor a legal guardian is with the juvenile alien at the time of apprehension, or within a geographical proximity to quickly provide care for the juvenile. 8 C.F.R. §236.3(b)(1).

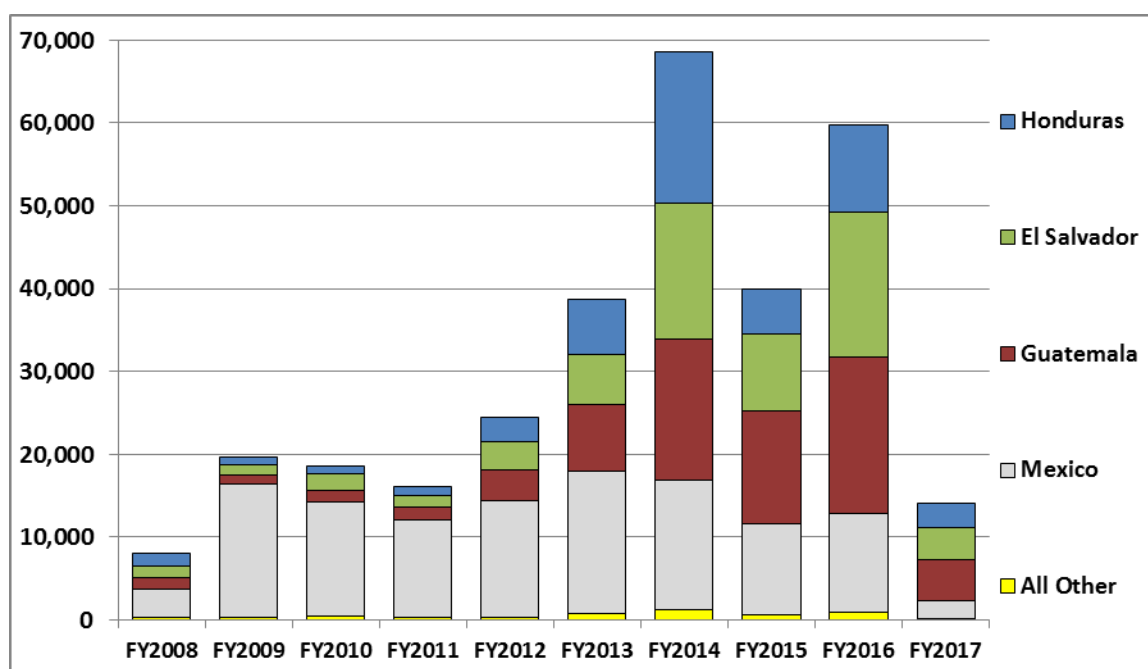
<sup>9</sup> White House, DHS and HHS, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

This report opens with an analysis of UAC apprehension data. It then discusses current policy on the treatment, care, and custody of the population and describes the responsibilities of each federal agency involved with the population. The report then discusses both administrative and congressional actions to deal with the UAC surge in FY2014 and action since then to address possible future surges.

## Scope of the Issue

Since FY2011, UAC apprehensions increased each year through FY2014: from 16,067 in FY2011 to 24,481 in FY2012 to 38,759 in FY2013 and 68,541 in FY2014 (**Figure 1**). At the close of FY2014, the Border Patrol had apprehended more UAC than in any of the previous six years and close to four times as many UAC as in FY2011. In FY2015, apprehensions numbered 39,970, a 42% drop from FY2014 apprehensions.<sup>10</sup> At the close of FY2016 they stood at 59,692, roughly 20,000 more than in FY2015, and 9,000 less than the peak of FY2014. During the first two months of FY2017 (October and November, 2016), USBP apprehended 14,128 unaccompanied alien children.<sup>11</sup> As a basis for comparison, apprehensions in the first two months of FY2015 and FY2016 numbered 5,143 and 10,588, respectively

**Figure 1. UAC Apprehensions at the Southwest Border by Country of Origin, FY2008-FY2017**



**Sources:** For FY2008-FY2013: U.S. Department of Homeland Security, United States Border Patrol, *Juvenile and Adult Apprehensions—Fiscal Year 2013*. For FY2014-FY2017, Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

**Notes:** FY2017 data include data on only the first two months of the fiscal year.

<sup>10</sup> Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2015>.

<sup>11</sup> Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2017>.

Nationals of Guatemala, Honduras, El Salvador, and Mexico account for the majority of unaccompanied alien children apprehended at the Mexico-U.S. border (**Figure 1**). Flows of UAC from Mexico rose substantially in FY2009 and have fluctuated since then between roughly 11,000 and 17,000. In contrast, UAC from Guatemala, Honduras, and El Salvador increased sizably starting in FY2011. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the other three Central American countries accounted for 17%. By September 30, 2014, those proportions had almost reversed, with Mexican UAC comprising 23% of the 68,541 UAC apprehensions and UAC from the three Central American countries comprising 75%.<sup>12</sup> In FY2015 and FY2016, the percentages of unaccompanied children originating from Mexico were 28% and 20%, respectively.

The majority of UAC apprehensions have occurred within the Rio Grande and Tucson border sectors (62% and 11%, respectively, in FY2016).<sup>13</sup> The proportions of UAC who were female or who were under the age of 13 also increased in FY2014, and ORR data on UAC referred to the agency indicate an increase in the female UAC proportion from 23% in FY2012 to 33% in FY2016.<sup>14</sup> Apprehensions of family units (unaccompanied children with a related adult) increased from 14,855 in FY2013 to 68,445 in FY2014, declined to 39,838 in FY2015 and increased to 77,674 in FY2016. In the first two months of FY2017, family unit apprehensions totaled 28,691.<sup>15</sup> Of these apprehended family units in FY2016 and FY2017, 95% originated from Guatemala, El Salvador, and Honduras.

## Current Policy

Two laws and a settlement most directly affect U.S. policy for the treatment and administrative processing of UAC: the *Flores Settlement Agreement* of 1997; the Homeland Security Act of 2002; and the Trafficking Victims Protection Reauthorization Act of 2008.

During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS)<sup>16</sup> caused a series of lawsuits against the government that eventually resulted in the *Flores Settlement Agreement* (*Flores Agreement*) in 1997.<sup>17</sup> The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC as minors while detained without a parent or legal guardian present.<sup>18</sup> It required that immigration officials detaining minors provide (1) food and drinking

<sup>12</sup> The surge in the number of children migrating to the United States mirrors a similar increase among adults. From FY2011 through FY2015, the number of Border Patrol apprehensions of third-country nationals increased almost threefold from 54,098 to 148,995. Over the same period, those apprehended from Mexico decreased from 286,154 to 188,122. United States Border Patrol, *Total Illegal Alien Apprehensions by Fiscal Year, FY2000-FY2015*, data provided by CBP to CRS.

<sup>13</sup> Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

<sup>14</sup> U.S. Department of Health and Human Services, Office of Refugee Resettlement, “Facts and Data,” <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>15</sup> Customs and Border Protection, “Southwest Border Unaccompanied Alien Children,” <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2017>.

<sup>16</sup> The Homeland Security Act of 2002 dissolved the Immigration and Naturalization Service (INS) and its functions were split in the Departments of Homeland Security, Justice, and Health and Human Services.

<sup>17</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997). Many of the agreement’s terms have been codified at 8 C.F.R. §§236.3, 1236.3.

<sup>18</sup> See DHS Office of Inspector General, *CBP’s Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.



water, (2) medical assistance in emergencies, (3) toilets and sinks, (4) adequate temperature control and ventilation, (5) adequate supervision to protect minors from others, and (6) separation from unrelated adults whenever possible. For several years following the *Flores Agreement*, criticism continued over whether the INS had fully implemented the drafted regulations.<sup>19</sup>

Five years later, the Homeland Security Act of 2002 (HSA; P.L. 107-296) divided responsibilities for the processing and treatment of UAC between the newly created Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR). To DHS, the law assigned responsibility for the apprehension, transfer, and repatriation of UAC. To HHS, the law assigned responsibility for coordinating and implementing the care and placement of UAC in appropriate custody, reunifying UAC with their parents abroad if appropriate, maintaining and publishing a list of legal services available to UAC, and collecting statistical information on UAC, among other responsibilities.<sup>20</sup> The HSA also established a statutory definition of UAC as unauthorized minors not accompanied by a parent or legal guardian. Despite these developments, criticism continued that the *Flores Agreement* had not been fully implemented.

In response to ongoing concerns that UAC apprehended by the Border Patrol were not being adequately screened for reasons they should not be returned to their home country, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457). The TVPRA directed the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that UAC in the United States are safely repatriated to their country of nationality or of last habitual residence. The section set forth special rules for UAC from contiguous countries (i.e., Mexico and Canada), allowing such children, under certain circumstances, to return to Mexico or Canada without additional penalties, and directing the Secretary of State to negotiate agreements with Mexico and Canada to manage the repatriation process. The TVPRA mandated that unaccompanied alien children from countries other than Mexico or Canada—along with UAC from those countries who are apprehended away from the border—are to be transferred to the care and custody of HHS and placed in formal removal proceedings. The TVPRA required that children from contiguous countries be screened within 48 hours of being apprehended to determine whether they should be returned to their country or transferred to HHS and placed in removal proceedings.

## Processing and Treatment of Apprehended UAC

Several DHS agencies handle the apprehension, processing, and repatriation of UAC, while HHS handles the care and custody of UAC. The Executive Office for Immigration Review (EOIR) in the U.S. Department of Justice conducts immigration removal proceedings.

CBP apprehends, processes, and detains the majority of UAC arrested along U.S. borders. DHS's Immigration and Customs Enforcement (ICE) physically transports UAC from CBP to ORR custody. ORR is responsible for detaining and sheltering UAC who are from noncontiguous countries and those from contiguous countries (i.e., Canada and Mexico) who may be victims of trafficking or have an asylum claim, while they await an immigration hearing. DHS's U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC. DOJ's EOIR conducts immigration proceedings that

<sup>19</sup> See U.S. Department of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Executive Summary, Report no. I-2001-009, September 28, 2001.

<sup>20</sup> ORR assumed care of UAC on March 1, 2003, and created the Division of Unaccompanied Children's Services (DUCS) for addressing the requirements of this population. P.L. 107-296, Section 462.



determine whether UAC may be allowed to remain in the United States or must be deported to their home countries. ICE is responsible for returning UAC who are ordered removed from the United States to their home countries. The following sections discuss the role of each of these federal agencies in more detail.

## Customs and Border Protection

The Office of Border Patrol (OBP)<sup>21</sup> and the Office of Field Operations (OFO)<sup>22</sup> are responsible for apprehending and processing UAC that come through a port of entry (POE) or are found at or near the border.<sup>23</sup> UAC that are apprehended between POEs are transported to Border Patrol stations, and if they are apprehended at POEs, they are escorted to CBP secondary screening areas. In both cases, when CBP confirms a juvenile has entered the country illegally and unaccompanied, he or she is classified as a UAC and processed for immigration violations, and the appropriate consulate is notified that the juvenile is being detained by DHS.

The Border Patrol apprehends the majority of UAC at or near the border. They also process UAC.<sup>24</sup> With the exception of Mexican and Canadian UAC who meet the criteria discussed below, the Border Patrol has to turn UAC over to ICE for transport to ORR within 72 hours of determining that the children are UAC.<sup>25</sup> Until 2008, the Border Patrol, as a matter of practice, returned Mexican UAC to Mexico. Under this practice, Mexican UAC were removed through the nearest POE and turned over to a Mexican official within 24 hours and during daylight.

As mentioned, the TVPRA required the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, to develop policies and procedures to ensure that UAC are safely repatriated to their country of nationality or last habitual residence. Of particular significance, the TVPRA required CBP to follow certain criteria for UAC who are nationals or habitual residents from a contiguous country (i.e., Canada and Mexico).<sup>26</sup> In these cases, CBP personnel must screen each UAC within 48 hours of apprehension to determine the following:

- the UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the minor is at risk should the minor be returned to his/her country of nationality or last habitual residence;
- the UAC does not have a possible claim to asylum; and

<sup>21</sup> OBP includes the Border Patrol. OBP and the Border Patrol are used interchangeably throughout this section. OBP is responsible for immigration and customs enforcement *between ports of entry*.

<sup>22</sup> The OFO oversees CBP officers who inspect travelers and goods *at ports of entry*.

<sup>23</sup> When OBP and OFO are both referenced together in this section, “CBP” is used.

<sup>24</sup> The processing of UAC includes gathering biographic information such as their name and age as well as their citizenship and whether they are unaccompanied. Border Patrol agents also collect biometrics on UAC and query relevant immigration, terrorist, and criminal databases.

<sup>25</sup> The 72-hour time period was established in statute by the TVPRA.

<sup>26</sup> 8 U.S.C. §§1101 et seq. Although the screening provision only applies to UAC from contiguous countries, in March 2009 DHS issued a policy that, in essence, made the screening provisions applicable to all UAC. Testimony of Office of Immigration and Border Security Acting Deputy Assistant Secretary Kelly Ryan, in U.S. Congress, Senate Committee on the Judiciary, *Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 13, 2011.

- the UAC is able to make an independent decision to voluntarily return to his/her country of nationality or last habitual residence.<sup>27</sup>

If CBP personnel determine the minor to be inadmissible under the Immigration and Nationality Act, they can permit the minor to withdraw his/her application for admission<sup>28</sup> and the minor can voluntarily return to his/her country of nationality or last habitual residence.

The TVPRA contains specific safeguards for the treatment of UAC while in the care and custody of CBP, and it provides guidance for CBP personnel on returning a minor to his/her country of nationality or last habitual residence. It also requires the Secretary of State to negotiate agreements with contiguous countries for the repatriation of their UAC. The agreements serve to protect children from trafficking and, at minimum, must include provisions that (1) ensure the handoff of the minor children to an appropriate government official; (2) prohibit returning UAC outside of “reasonable business hours”; and (3) require border personnel of the contiguous countries to be trained in the terms of the agreements.

As mentioned, UAC apprehended by the Border Patrol are brought to a Border Patrol facility, where they are processed. In 2008, the agency issued a memorandum entitled “Hold Rooms and Short Term Custody.”<sup>29</sup> Since the issuance of this policy, non-governmental organizations (NGOs) have criticized the Border Patrol for failing to fully uphold provisions in current law and the *Flores Agreement*.<sup>30</sup> Indeed, the DHS Office of Inspector General (OIG) issued a report in 2010 concluding that while CBP was in general compliance with the *Flores Agreement*, it needed to improve its handling of UAC.<sup>31</sup>

The 2010 OIG report, however, did not address whether CBP was in compliance with the TVPRA. As highlighted above, the TVPRA requires CBP personnel to screen UAC from contiguous countries for severe forms of trafficking in persons *and* for fear of persecution if they are returned to their country of nationality or last habitual residence. At least one NGO that conducted a two-year study on UAC<sup>32</sup> asserted in its report that CBP does not adequately do this nor has it established related training for their Border Patrol agents.<sup>33</sup>

<sup>27</sup> P.L. 110-457, §235(a)(2)(A).

<sup>28</sup> Under the INA, apprehension at the border constitutes an application for admission to the United States. In this case, the UAC is permitted to return immediately to Mexico or Canada, and does not face administrative or other penalties. INA §235(a)(4); 8 U.S.C. §1225(a)(4).

<sup>29</sup> UAC are held in “hold rooms” at Border Patrol stations. The 2008 memorandum, which is publicly available but redacted, outlines agency policy on the care and treatment of individuals in CBP care and custody. See U.S. Customs and Border Patrol, Memorandum on “Hold Rooms and Short Term Custody,” June 2, 2008, <http://foiarr.cbp.gov/streamingWord.asp?i=378>, accessed by CRS on January 10, 2017.

<sup>30</sup> See for example, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, by Betsy Cavendish and Maru Cortazar, Appleseed, Washington DC, 2011 (hereinafter referred to as *Children at the Border*).

<sup>31</sup> Department of Homeland Security, Office of Inspector General, *CBP’s Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

<sup>32</sup> *Children at the Border*.

<sup>33</sup> Relatedly, the 2010 OIG study was unable to determine whether CBP personnel had sufficient training to comply with the provisions in the *Flores Agreement*. Notably, the Appleseed study (*Children at the Border*) included site visits to ten Border Patrol facilities as well as site visits to locales in Mexico and interviews with government officials in both countries and minors in custody and who have been repatriated. Whether this limited site visit sample is sufficiently varied to be adequately generalizable to all Border Patrol facilities on the U.S.-Mexico border is unclear.

## Immigration and Customs Enforcement

ICE is responsible for physically transferring UAC from CBP to ORR custody. ICE also may apprehend UAC in the U.S. interior during immigration enforcement actions. In addition, ICE represents the government in removal procedures before EOIR. Unaccompanied alien children who are not subject to TVPRA's special repatriation procedures for some children from Mexico or Canada (i.e., voluntary departure) may be placed in standard removal proceedings pursuant to INA Section 240. The TVPRA specifies that in standard removal proceedings, UAC are eligible for voluntary departure under INA Section 240B at no cost to the child.

ICE is also responsible for the physical removal of all foreign nationals, including UAC who have final orders of removal or who have elected voluntary departure while in removal proceedings. To safeguard the welfare of all UAC, ICE has established policies for repatriating UAC, including

- returning UAC only during daylight hours;
- recording transfers by ensuring that receiving government officials or designees sign for custody;
- returning UAC through a port designated for repatriation;
- providing UAC the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.<sup>34</sup>

ICE notifies the country of every foreign national being removed from the United States.<sup>35</sup> Implementing a removal order depends on whether the U.S. government can secure travel documents for the alien being removed from the country in question.<sup>36</sup> As such, the United States depends on the willingness of foreign governments to accept the return of their nationals. Each country sets its own documentary requirements for repatriation of their nationals.<sup>37</sup> While some allow ICE to use a valid passport to remove an alien (if the alien possesses one), others require ICE to obtain a travel document specifically for the repatriation.<sup>38</sup> According to one report, the process of obtaining travel documents can become problematic, because countries often change their documentary requirements or raise objections to a juvenile's return.<sup>39</sup>

Once the foreign country has issued travel documents, ICE arranges the UAC's transport. If the return involves flying, ICE personnel accompany the UAC to his or her home country. ICE uses commercial airlines for most UAC removals. ICE provides two escort officers for each UAC.<sup>40</sup> Mexican UAC are repatriated in accordance with Local Repatriation Agreements (LRA), which

<sup>34</sup> Email from ICE Congressional Relations, May 16, 2014.

<sup>35</sup> ICE uses a country clearance to notify a foreign country, through a U.S. Embassy abroad, that a foreign national is being repatriated. In addition, when ICE personnel escort the alien during his or her repatriation, the country clearance process notifies the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

<sup>36</sup> Conversation with Doug Henkel, Associate Director, ICE Removal and Management Division, February 20, 2012.

<sup>37</sup> Depending on the country and depending on where the UAC is housed, the consular officers will conduct in-person or phone interviews. Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27 (hereinafter referred to as *The Flow of Unaccompanied Children*).

<sup>38</sup> Annex 9 of the Civil Aviation Convention requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

<sup>39</sup> *The Flow of Unaccompanied Children*, p. 27.

<sup>40</sup> An additional officer is added for each group that exceeds five UAC. The gender of the officers corresponds to the gender of the children repatriated. Email from ICE Congressional Relations, May 16, 2014.

require that ICE notify the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).<sup>41</sup>

## Office of Refugee Resettlement

The Unaccompanied Alien Children Program in ORR/HHS provides for the custody and care of unaccompanied alien minors who have been apprehended by ICE or CBP or referred by other federal agencies. The TVPRA directed that HHS ensure that UAC “be promptly placed in the least restrictive setting that is in the best interest of the child.”<sup>42</sup> The HSA requires that ORR develop a plan to ensure the timely appointment of legal counsel for each UAC, ensure that the interests of the child are considered in decisions and actions relating to the care and custody of a UAC, and oversee the infrastructure and personnel of UAC residential facilities, among other responsibilities.<sup>43</sup> ORR also screens each UAC to determine if the child has been a victim of a severe form of trafficking in persons, if there is credible evidence that the child would be at risk if he or she were returned to his/her country of nationality or last habitual residence, and if the child has a possible claim to asylum.<sup>44</sup>

ORR arranges to house the child either in one of its shelters or in foster care; or the UAC program reunites the child with a family member. According to ORR, the majority of the youth are cared for initially through a network of state-licensed, ORR-funded care providers that offer classroom education, mental and medical health services, case management, and socialization and recreation. ORR oversees different types of shelters to accommodate unaccompanied children with different circumstances, including nonsecure shelter care, secure care, and transitional foster care facilities.<sup>45</sup> A juvenile may be held in a secure facility only if he or she is charged with criminal or delinquent actions, threatens or commits violence, displays unacceptably disruptive conduct in a shelter, presents an escape risk, is in danger and is detained for his/her own safety, or is part of an emergency or influx of minors that results in insufficient bed space at nonsecure facilities.<sup>46</sup>

The same care providers also facilitate the release of UAC to family members or other sponsors who are able to care for them.<sup>47</sup> The *Flores Agreement* outlines the following preference ranking for sponsor types: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child’s parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.<sup>48</sup>

<sup>41</sup> Ibid.

<sup>42</sup> §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(b)(2).

<sup>43</sup> Section 235(c) of the TVPRA and Section 462(b) of the Homeland Security Act of 2002 (HSA, P.L. 107-296) describe conditions for the care and placement of UAC in federal custody.

<sup>44</sup> As noted previously, all UAC are initially screened by CBP for trafficking victimization or risk as well as possible claims to asylum, regardless of country of origin.

<sup>45</sup> Shelter care refers to a minimally restrictive level of care, for most UAC without special needs. Secure care facilities are generally reserved for children with behavioral issues, a history of violent offenses or who pose a threat to themselves or others. Transitional foster care, which involves placement with families, is prioritized for children under age 13, sibling groups with one child younger than 13, pregnant and parenting teens, and children with special needs, including mental health needs. CRS briefing on unaccompanied children with ORR, May 5, 2014.

<sup>46</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997), Exhibit 2.

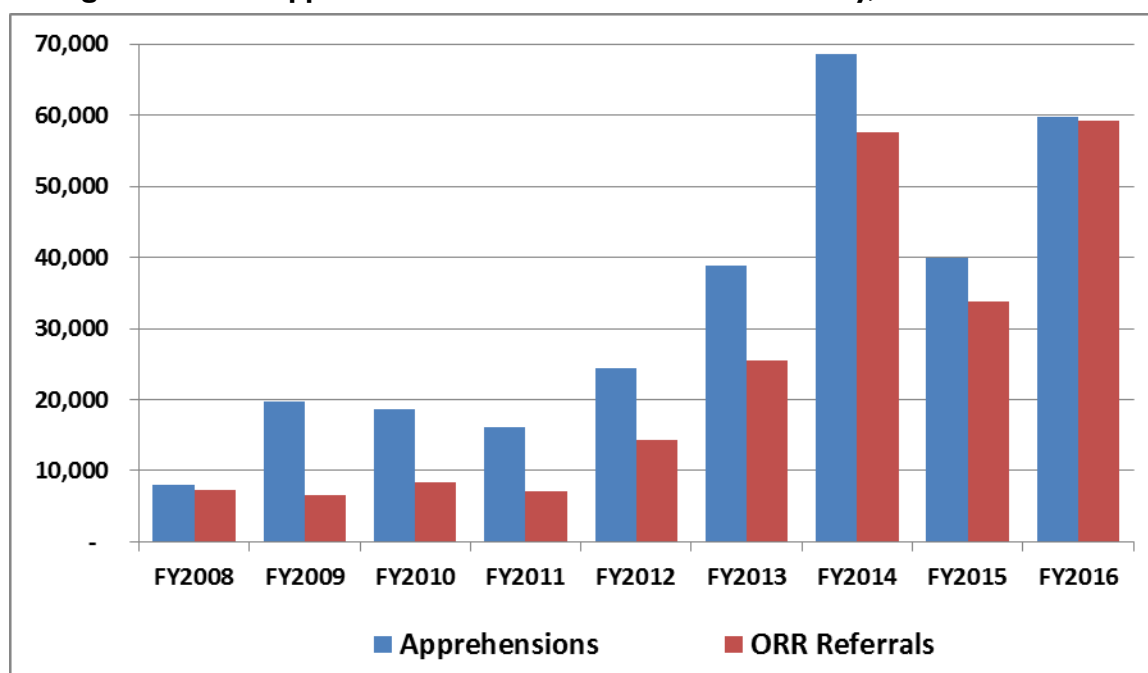
<sup>47</sup> Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, Fact Sheet, January 2016, (hereinafter referred to as *ORR UAC Fact Sheet*, January 2016.)

<sup>48</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997), p. 10.

In making these placement determinations, ORR conducts a background investigation to ensure the identity of the adult assuming legal guardianship for the UAC and that the adult does not have a record of abusive behavior. ORR may consult with the consulate of the UAC's country of origin as well as interview the UAC to ensure he or she also agrees with the proposed placement. If such background checks reveal evidence of actual or potential abuse or trafficking, ORR may require a home study as an additional precaution.<sup>49</sup> In addition, the parent or guardian is required to complete a Parent Reunification Packet to attest that they agree to take responsibility for the UAC and provide him/her with proper care.<sup>50</sup>

**Figure 2** shows both annual UAC apprehensions and annual referrals of unaccompanied children to ORR since FY2008. As expected, a positive relationship exists between the two measures, but in recent years, as children from non-contiguous countries have dominated the share of all UAC apprehensions, the correspondence between apprehensions and referrals has increased. In FY2009, when unaccompanied children from the three Northern Triangle countries comprised 17% of all UAC apprehensions, the proportion of children referred to ORR was 34% of total apprehensions. In FY2016, when unaccompanied children from those countries dominated the flow with 80% of all UAC apprehensions, the proportion referred to ORR was 99%.

**Figure 2. UACs Apprehended and Referred to ORR Custody, FY2008 - FY2016**



**Source:** *Apprehensions*: See sources for Figure 1 above; *Referrals*: FY2008-FY2015: ORR, Fiscal Year 2017, Administration for Children and Families, *Justification of Estimates for Appropriations Committees*, p. 243; *FY2016*: CRS presentation of unpublished data from the HHS Office of Refugee Resettlement.

<sup>49</sup> A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being and involves background checks of both the sponsor and any adult household members, one or more home visits, a face-to-face interview with the sponsor and potentially with other household members, and post-release services. Pursuant to the TVPRA of 2008, home studies are required for certain UAC considered especially vulnerable.

<sup>50</sup> Office of Refugee Resettlement, Unaccompanied Children's Services, *ORR/DCS Family Reunification Packet for Sponsors (English/Español)*, <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services#Family%20Reunification%20Packet%20for%20Sponsors>, accessed by CRS on January 10, 2017.



ORR reports that most children served are reunified with family members.<sup>51</sup> Between FY2008 and FY2010, the length of stay in ORR care averaged 61 days and total time in custody ranged from less than 1 day to 710 days.<sup>52</sup> ORR reported that children spent about 34 days on average in the program as of January 2016.<sup>53</sup> Removal proceedings continue even when UAC are placed with parents or other relatives.<sup>54</sup> As noted above, not all UAC are referred to ORR; for instance, many UAC from contiguous countries voluntarily return home.

The sizable increases in UAC referrals since FY2008 have challenged ORR to meet the demand for its services while maintaining related child welfare protocols and administrative standards.<sup>55</sup> These challenges reached a crescendo in January 2016 when a Senate investigation indicated that in FY2014, some UAC who had originally been placed with distant relatives and parentally-approved guardians ended up being forced to work in oppressive conditions on an Ohio farm.<sup>56</sup> The report outlined a range of what it characterized as serious deficiencies related to the safe placement of children with distant relatives and unrelated adults as well as post-placement follow-up. During the Senate Homeland Security Committee hearing that followed, HHS officials acknowledged limitations of their screening and post-placement follow-up procedures for such sponsors. They also reiterated the legal basis for the termination of UAC custody and HHS liability once custody of the unaccompanied minor was handed over to the sponsor.<sup>57</sup>

## U.S. Citizenship and Immigration Services

As mentioned, U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC.<sup>58</sup> If either CBP or ICE finds that the child is a UAC and transfers him/her to ORR custody, USCIS generally will take jurisdiction over any asylum application, even where evidence shows that the child reunited with a parent or legal guardian after CBP or ICE made the UAC determination. USCIS also has initial jurisdiction over asylum applications filed by UAC with pending claims in immigration court, with cases on

<sup>51</sup> In FY2014, 96% of discharged UAC were released to a sponsoring family member. Of this group 58% were parents or legal guardians, 29% were other relatives, and 9% were non-relatives. The remaining 4% of UAC were discharged for other reasons, such as a transfer to DHS due to aging-out of UAC status. Source: unpublished data provided to CRS by Office of Legislative Affairs, Administration for Children and Families, Office of Refugee Resettlement, U.S. Department of Health and Human Services, March 20, 2015.

<sup>52</sup> *The Flow of Unaccompanied Children*, p. 17.

<sup>53</sup> *ORR UAC Fact Sheet*, January 2016. An earlier May 2014 version of this fact sheet cited an average of 35 days.

<sup>54</sup> Some communities and states have objected to unaccompanied children being located in their jurisdictions (either in shelters or in family placements) as well as the lack of notification by ORR. For more information, see U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Impact on Local Communities of the Release of Unaccompanied Alien Minors and the Need for Consultation and Notification*, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 10, 2014.

<sup>55</sup> A recent report by the Government Accountability Office (GAO) raised concerns about ORR's lack of a planning process for its capacity needs, inconsistent monitoring of service provision by its nonprofit grantee organizations that provide shelter services, limited contact with children following their placement, and administrative recording of post-placement follow-up procedures. See U.S. Government Accountability Office, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180, February 2016.

<sup>56</sup> United States Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, January 28, 2016.

<sup>57</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Adequacy of the Department of Health and Human Services' Efforts to Protect Unaccompanied Alien Children From Human Trafficking*, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 28, 2016.

<sup>58</sup> For information on UAC and asylum, see archived CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*.

appeal before the Board of Immigration Appeals, or with petitions under review with federal courts as of enactment of the TVPRA (December 23, 2008). UAC must appear at any hearings scheduled in immigration court, even after petitioning for asylum with USCIS.

## The Executive Office for Immigration Review

The Executive Office for Immigration Review (EOIR) within the U.S. Department of Justice is responsible for adjudicating immigration cases and conducting removal proceedings. Generally, during an immigration removal proceeding, the foreign national and the U.S. government present testimony so that the immigration judge can make a determination on whether the foreign national is removable or qualifies for some type of relief from removal (i.e., the alien is permitted to remain in the United States either permanently or temporarily). The TVPRA requires that HHS ensure, to the greatest extent possible, that UAC have access to legal counsel, and it also permits HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children.

EOIR has specific policies for conducting removal hearings of UAC to ensure that UAC understand the nature of the proceedings, can effectively present evidence about their cases, and have appropriate assistance. The policy guidelines discuss possible adjustments to create “an atmosphere in which the child is better able to present a claim and to participate more fully in the proceedings.” Under these guidelines, immigration judges should:

- establish special dockets for UAC that are separated from the general population;
- allow child-friendly courtroom modifications (e.g., judges not wearing robes, allowing the child to have a toy, permitting the child to testify from a seat rather than the witness stand, allowing more breaks during the proceedings);
- provide courtroom orientations to familiarize the child with the court;
- explain the proceedings at the outset;
- prepare the child to testify;
- employ child-sensitive questioning; and,
- strongly encourage the use of pro bono legal representation if the child is not represented.

On July 9, 2014, in response to the UAC surge, EOIR issued new guidelines that prioritized unaccompanied children and non-detained families above other cases in the immigration courts and on the same level as detained aliens.<sup>59</sup> On July 18, 2014, EOIR initiated a new case recording

<sup>59</sup> Immigration and children’s advocacy groups have criticized these policies for rushing the adjudication process. See for example, Wendy Feliz, “Immigration Courts Are Ordering Unrepresented Children Deported,” *Immigration Impact*, March 10, 2015; and Walter Ewing, “Why More Immigration Judges Are Needed,” *Immigration Impact*, May 11, 2015. See also U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Oversight of the Executive Office for Immigration Review*, statement of Ranking Member Zoe Lofgren, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., December 3, 2015, pp. 34-35.



system that coincided with its announcement of its revised adjudication priorities.<sup>60</sup> The new system allows EOIR to track legal outcomes of UAC with greater precision.<sup>61</sup>

CRS reviewed almost two years of EOIR data covering July 18, 2014 through June 28, 2016.<sup>62</sup> Of the 69,540 UAC who were given Notices to Appear (NTA)<sup>63</sup> by DHS over this period, 55,793 had at least one master calendar (“scheduling”) hearing. Of the total cases scheduled, EOIR classified 31,091 as completed. Of the total completed cases, 12,977 resulted in removal orders, of which 11,528 (89%) were issued *in absentia*, meaning that the UAC had not shown up to the hearing. Of the other total completed cases that did not result in a removal order, 7,799 were terminated,<sup>64</sup> 906 resulted in voluntary departure,<sup>65</sup> 8,846 were administratively closed,<sup>66</sup> and 477 resulted in other administrative outcomes<sup>67</sup> (Table 1).

**Table 1. UAC Initial Case Completion by Outcome and Legal Representation**  
(July 18, 2014, through June 28, 2016)

Outcome	Total		With Legal Representation		Without Legal Representation	
	Cases	% of Total	Cases	% of Total	Cases	% of Total
Removal	12,977	41.7%	2,583	13.4%	10,394	88.2%
Termination	7,799	25.1%	7,317	37.9%	482	4.1%
Voluntary Departure	906	2.9%	619	3.2%	287	2.4%
Administrative Closure	8,846	28.5%	8,277	42.9%	569	4.8%
Other Administrative Outcome	477	1.5%	431	2.2%	46	0.4%
Immigration Relief	86	0.3%	83	0.4%	3	0.0%
<b>Total</b>	<b>31,091</b>	<b>100.0%</b>	<b>19,310</b>	<b>100.0%</b>	<b>11,781</b>	<b>100.0%</b>

<sup>60</sup> The four priority categories are: 1) unaccompanied child; 2) adults with a child or children detained; 3) adults with a child or children released on alternatives to detention; and 4) recently detained border crossers. See statement of Juan P. Osuna, Director of Executive Office of Immigration Review, U.S. Department of Justice, *The President's Emergency Supplemental Request for Unaccompanied Children and Related Matters*, in U.S. Congress, Senate Committee on Appropriations, hearings, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 10, 2014.

<sup>61</sup> Prior to this system, EOIR tracked only the number of juveniles it processed and could not distinguish between UAC and other minors.

<sup>62</sup> Executive Office for Immigration Review, Unaccompanied Children Priority Code Adjudication, July 18, 2014-June 28, 2016, unpublished data provided to CRS, August 31, 2016.

<sup>63</sup> A *Notice to Appear* is a charging document that initiates immigration removal proceedings.

<sup>64</sup> A case termination refers to a decision by an immigration judge to dismiss the case associated with a particular charging document. The conventional charging document given to a UAC who is put into removal proceedings is the *Notice to Appear*. If a case is terminated in this situation, the child is not subject to removal related to the dismissed charging document. If DHS chooses to subsequently pursue the case, it must issue a new charging document.

<sup>65</sup> A UAC may elect to leave the United States voluntarily at any point during his or her removal proceedings. For more information on voluntary departure, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

<sup>66</sup> An administrative closing refers to the temporary removal of a case from an immigration judge's calendar or docket by the court. If DHS chooses to pursue the case, it may ultimately be placed back on the judge's calendar or docket.

<sup>67</sup> According to EOIR, other administrative outcomes refers to “administrative closure for reasons other than prosecutorial discretion, by joint motion or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA).” An example could include a change of venue at a more advanced stage of the case.

**Source:** Executive Office for Immigration Review, Unaccompanied Children Priority Code Adjudication, July 18, 2014-June 28, 2016, unpublished data provided to CRS, August 31, 2016.

**Notes:** Numbers may not sum to totals presented because of rounding.

Outcomes varied considerably depending upon whether children received legal representation. Of the 11,781 children without legal representation, 10,394 (or 88.2%) were ordered removed. Of the 19,310 children with legal representation, 2,583 (or 13.4%) were ordered removed. Cases that did not result in a removal order concluded by children having their cases administratively closed or terminated. In 86 cases (0.3% of all initial case completions for this period), children received some form of immigration relief. Generally, the most usual forms of immigration relief for UAC include asylum, special immigrant juvenile status for abused, neglected, or abandoned children who are declared dependent by state juvenile courts<sup>68</sup> and “T nonimmigrant status” for victims of trafficking.<sup>69</sup>

## Administrative and Congressional Action

The Obama Administration and Congress have both taken action since 2014 to respond to the UAC surge. The Administration developed a working group to coordinate the efforts of the various agencies involved in responding to the issue, temporarily opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border, initiated programs to address root causes of child migration in Central America, and requested funding from Congress to deal with the crisis. In turn, Congress considered supplemental appropriations for FY2014 and increased funding for UAC-related activities in ORR and DHS appropriations for subsequent fiscal years.

### Administrative Action

In response to the UAC surge, the Obama Administration announced in June 2014 that it had developed a Unified Coordination Group comprised of representatives from key agencies and headed by the Administrator of the Federal Emergency Management Agency (FEMA), Craig Fugate.<sup>70</sup> The FEMA administrator’s role was to “lead and coordinate Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law ... are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation.”<sup>71</sup>

From the outset, CBP maintained primary responsibility for border security operations at and between ports of entry and, working with ICE, provided for the care of unaccompanied children in temporary DHS custody.<sup>72</sup> DHS coordinated with the Departments of Health and Human Services, State, and Defense, as well as the General Services Administration and other agencies, to ensure a coordinated and prompt response within the United States in the short term, and in the

<sup>68</sup> For more information, see CRS Report R43703, *Special Immigrant Juveniles: In Brief*.

<sup>69</sup> For more information, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

<sup>70</sup> Department of Homeland Security, “Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border,” press release, June 2, 2014; and Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, “Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children,” press release, June 3, 2014.

<sup>71</sup> The White House, Office of the Press Secretary, “Presidential Memorandum – Response to the Influx of Unaccompanied Alien Children Across the Southwest Border” press release, June 2, 2014.

<sup>72</sup> As one of its missions, ICE works to dismantle organizations that smuggle UAC into the United States.

longer term to work with migrant-sending countries to undertake reforms to address the causes behind the recent flows.<sup>73</sup> In June 2014, DHS initiated a program to work with the Central American countries on a public education campaign to dissuade UAC from attempting to migrate illegally to the United States.<sup>74</sup>

To manage the influx of UAC, ORR used group homes operated by nonprofit organizations with experience providing UAC-oriented services (e.g., medical attention, education). HHS also coordinated with the Department of Defense (DOD), which temporarily made facilities available for UAC housing at Lackland Air Force Base in San Antonio, TX, and at Naval Base Ventura County in Oxnard, CA. Arrangements at both sites ended August 2014.<sup>75</sup>

To address the legal needs of large numbers of children entering the immigration court system, the Corporation for National and Community Service (CNCS), which administers AmeriCorps,<sup>76</sup> partnered with EOIR to create “Justice AmeriCorps,” a grant program that enrolled approximately 100 lawyers and paralegals as AmeriCorps members to provide UAC with legal representation during removal proceedings.<sup>77</sup>

DOJ’s Office of Legal Access Programs established the Legal Orientation Program for Custodians of Unaccompanied Children (LOPC), the goals of which are “to improve the appearance rates of non-detained children at their immigration court hearings, and to protect children from mistreatment, exploitation, and trafficking by increasing access to legal and other services.” In FY2014 the LOPC served over 12,000 custodians for children released from ORR custody.<sup>78</sup> The LOPC operates a national call center that provides scheduling assistance and basic legal information to UAC custodians.<sup>79</sup> Additional Administration initiatives include partnering with Central American governments to combat gang violence, strengthen citizen security, spur economic development, and support the reintegration and repatriation of returned citizens.<sup>80</sup> The Administration also initiated a collaborative information campaign with Central American governments to inform would-be migrants on a variety of issues.<sup>81</sup>

<sup>73</sup> Department of Homeland Security, “Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border,” press release, June 2, 2014.

<sup>74</sup> Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, “Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children,” press release, June 3, 2014.

<sup>75</sup> Leslie Berestein Rojas, “Emergency Shelter for Unaccompanied Migrant Kids Opening in Ventura County,” 89.3 *KPCC, Southern California Public Radio*, June 5, 2014.

<sup>76</sup> For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*.

<sup>77</sup> Department of Justice and the Corporation for National and Community Service, “Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors,” press release, June 6, 2014.

<sup>78</sup> FY2014 information is the most recent available as of April 29, 2016. See United States Department of Justice, Administrative Review and Appeals, *FY 2017 Performance Budget Congressional Budget Submission*, p.4.

<sup>79</sup> *Ibid.*, pp. 3-4.

<sup>80</sup> White House, Office of the Press Secretary, “Fact Sheet: Unaccompanied Children from Central America.”

<sup>81</sup> *Ibid.*

## Congressional Action

As the UAC crisis unfolded in 2014, congressional attention initially focused on whether the various agencies responding to it had adequate funding. As the crisis began to wane, congressional attention shifted to mechanisms to prevent such a surge from reoccurring.

## Appropriations

In the Obama Administration's original FY2015 budget that was released in March 2014 for the agencies directly responsible for the UAC population (i.e., within ORR and DHS budgets), no funding increases were requested to help address the UAC surge. However, on May 30, 2014, the Office of Management and Budget updated its cost projections for addressing the growing UAC population and requested \$2.28 billion for FY2015 for ORR's UAC program and \$166 million for DHS for CBP overtime, contract services for care and support of UAC, and transportation costs.<sup>82</sup>

On July 8, 2014, the Administration requested a \$3.7 billion supplemental appropriation, almost all of which was directly related to addressing the UAC surge, including \$433 million for CBP, \$1.1 billion for ICE, \$1.8 billion for HHS, \$64 million for the Department of Justice (DOJ), and \$300 million for the Department of State (DOS).<sup>83</sup> On July 23, 2014, Senator Mikulski introduced the Emergency Supplemental Act, 2014 (S. 2648) which, among other provisions, would have provided supplemental funding of \$1.2 billion to HHS's Administration for Children and Families' Refugee and Entrant Assistance Program; \$320.5 million and \$22.1 million, respectively, for CBP and CBP's air and marine operations; and \$762.8 million to ICE for transportation and enforcement and removal costs. S. 2648 would have appropriated \$124.5 million to DOJ for court activities related to UAC processing, and \$300 million to DOS's and the U.S. Agency for International Development's (USAID's) unaccompanied alien-related activities, the same amount the Administration requested. Congress did not pass S. 2648.

In December 2014, the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) provided nearly \$1.6 billion for ORR's Refugee and Entrant Assistance Programs for FY2015, with the expectation that most of these funds would be directed toward the UAC program.<sup>84</sup> In addition, P.L. 113-235 included a new provision allowing HHS to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds.<sup>85</sup>

In March 2015, the Department of Homeland Security Appropriations Act, 2015 (P.L. 114-4) provided \$3.4 billion to ICE for detection, enforcement, and removal operations, including \$23.7 million for the transport of unaccompanied children for CBP. The act required that DHS estimate

<sup>82</sup> Executive Office of the President, Office of Management and Budget, Memorandum to Representative Nita Lowey, May 30, 2014.

<sup>83</sup> The White House, "Fact Sheet: Emergency Supplemental Request to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley Areas of the Southwest Border," press release, July 8, 2014.

<sup>84</sup> In addition to the UAC program, the Refugee and Entrant Assistance Program administers the following programs: Transitional/Cash and Medical Services, Victims of Trafficking, Social Services, Victims of Torture, Preventive Health, and Targeted Assistance. For additional information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

<sup>85</sup> This paragraph was excerpted from CRS Report R43967, *Labor, Health and Human Services, and Education: FY2015 Appropriations*.

FY2015 UAC apprehensions and the number of necessary agent or officer hours and related costs. It also provided for budgetary flexibility through the optional reprogramming of funds.<sup>86</sup>

In its FY2016 budget, the Obama Administration requested contingency funding as well as base funding for several agencies in the event of another surge of unaccompanied children. For ORR's Unaccompanied Children Program (within the Refugee and Entrant Assistance Program), the Administration requested \$948 million for base funding (the same as FY2015) and \$19 million for contingency funding.<sup>87</sup> Congress met the base funding request but appropriated no monies for contingency funding.

For FY2016 DHS funding, the Administration requested \$203.2 million in base funding and \$24.4 million in contingency funding for CBP for costs associated with the apprehension and care of unaccompanied children.<sup>88</sup> The Administration requested \$2.6 million in contingency funding for ICE to be used for transportation costs associated with UAC apprehensions if such apprehensions exceeded those in FY2015.<sup>89</sup> Neither the Senate<sup>90</sup> nor the House<sup>91</sup> committee-reported FY2016 DHS appropriations bills would have funded these requests. For DOJ, the Administration requested an additional \$50 million (two-year funding) for EOIR to process UAC.<sup>92</sup> Congress provided CBP with \$204.9 million in base funding but not the contingency funding requested. Congress provided ICE with \$24.3 million in UAC transportation funding but not the contingency transportation request.<sup>93</sup>

For FY2017, within the Administration's \$2.185 billion Refugee and Entrant Assistance request, the Administration requested \$1,321 million for unaccompanied children that included \$1,226 million in base funding and contingency funding which if triggered by larger than expected caseloads, would start at \$95 million and expand to \$400 million.<sup>94</sup> For UAC operations within DHS, the Administration requested \$13.2 million for ICE's Transportation and Removal Program, including \$3 million in contingency funding; and \$217.4 million for CBP, including \$5.4 million in contingency funding.

<sup>86</sup> Section 571 of the act permitted the Secretary to reprogram funds within CBP and ICE and transfer such funds into the two agencies' "Salaries and Expenses" accounts for the care and transportation of UAC. Section 572 of the act allowed for State Homeland Security Program and Urban Area Security Initiative grants that are awarded to states along the Southwest border to be used by recipients for costs or reimbursement of costs for providing humanitarian relief to unaccompanied children.

<sup>87</sup> Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2016, Justification of Estimates for Appropriations Committees*, p. 21.

<sup>88</sup> The total CBP contingency request was for \$134.5 million for costs associated with the apprehension and care of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC apprehensions, the FY2016 budget scored the requested increase at \$24.4 million.

<sup>89</sup> Base funding for ICE to transport UAC was not separated out from other transportation activities within the budget. The total ICE contingency request was for \$27.6 million for costs associated with transportation of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC requiring such transportation, the FY2016 budget scored the requested increase at \$2.6 million.

<sup>90</sup> S. 1619, S.Rept. 114-68.

<sup>91</sup> H.R. 3128, H.Rept. 114-215.

<sup>92</sup> See U.S. Department of Homeland Security, *FY2016 Congressional Budget Justification*, U.S. Department of Justice, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), *FY2016 Congressional Budget Justification*; Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2016, Justification of Estimates for Appropriations Committees*.

<sup>93</sup> See U.S. Department of Homeland Security, *FY2017 Congressional Budget Justification*.

<sup>94</sup> Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2017, Justification of Estimates for Appropriations Committee*, p. 237.



Congress, in turn, has passed two continuing resolutions (CRs) to fund ORR for FY2017. Congress first passed the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and the Zika Response and Preparedness Act (P.L. 114-223), which funded ORR from October 1, 2016, through December 9, 2016, at the same level and under the same conditions as FY2016, less an across-the-board reduction of 0.496%. Under the terms of the CR, HHS retained its authority to augment this account by up to 10% using transfers from other HHS accounts. HHS reportedly used this authority to transfer \$167 million into the account in November 2016, due to a surge in the UAC caseload.<sup>95</sup>

Prior to congressional consideration of a second CR, the Administration requested that any new CR include a provision providing a higher operating level for the Refugee and Entrant Assistance account. This stems from an increased caseload resulting from the growth in the number of unaccompanied children from Central American countries who have been apprehended at the U.S.-Mexico border. The Administration requested funding for the account at an annual rate of \$3.874 billion, of which \$2.823 billion would be used for unaccompanied children. However, the Administration separately noted that it might be possible to meet caseload demands at a lower level than requested, indicating that at a minimum this would require \$500 million for the Refugee and Entrant Assistance account, of which \$430 million would be used for unaccompanied children, as well as additional transfer authority in the event of higher than anticipated costs.<sup>96</sup>

More recently, Congress passed a second FY2017 CR, the Further Continuing and Security Assistance Appropriations Act, 2017 (P.L. 114-254), which funds most federal agencies through April 28, 2017.<sup>97</sup> The second FY2017 CR generally funds ORR programs at the same level and under the same conditions as in FY2016, minus an across-the-board reduction of 0.1901%.<sup>98</sup> However, this CR also contains a special provision authorizing HHS to transfer additional funds into the Refugee and Entrant Assistance account to support the UAC program under certain circumstances. Specifically, the CR authorizes HHS to transfer \$300 million to fund ORR programs dedicated to unaccompanied children as of February 1, 2017.<sup>99</sup> After March 1, 2017, if the UAC caseload for FY2017 exceeds by 40% or more the UAC caseload for the comparable period in FY2016, the CR would appropriate an additional \$200 million in new funding.

## Going Forward

In response to the UAC surge in the spring and summer of 2014, the Administration announced initiatives to unify efforts among federal agencies with UAC responsibilities and to address the

<sup>95</sup> Letter from Sylvia M. Burwell, Secretary of Health and Human Services, to the Honorable Roy Blunt, Chairman of the Labor, Health and Human Services, Education, and Related Agencies Subcommittee of the Senate Committee on Appropriations, November 9, 2016, provided by HHS to CRS. The general HHS transfer authority provision is located in Division H, Title II, Section 205 of the Consolidated Appropriations Act, 2016 (P.L. 114-113).

<sup>96</sup> The Administration's anomaly requests for the second CR were based on the assumption that the CR would run through the end of March 2017, one month less than the duration of the CR that was ultimately enacted.

<sup>97</sup> H.R. 2028. An exception is that the agencies funded by the Military Construction, Veterans Affairs, and Related Agencies appropriations act already received full-year funding in P.L. 114-223.

<sup>98</sup> Further Continuing and Security Assistance Appropriations Act, 2017, §101(a)(2).

<sup>99</sup> See §170 of the CR (H.R. 2028). The CR specifies that this transfer comes from the HHS Nonrecurring Expenses Fund (NEF). The NEF was created by the Consolidated Appropriations Act, 2008 (P.L. 110-161, Division G, Title II, §223) to enable the HHS Secretary to collect certain unobligated balances of expired discretionary funds appropriated to HHS from the General Fund. Funds transferred into the NEF typically support capital acquisitions across HHS, such as facilities infrastructure and information technology. The FY2017 CR also includes a provision rescinding \$100 million from the NEF (see §170(d)).

situation with programs geared toward unaccompanied children from several Central American countries. Additionally, Congress increased funding for the HHS program responsible for the care of unaccompanied children, and permitted the Secretary of DHS to transfer funds from within a specific CBP and ICE account for the care and transportation of unaccompanied children, among other actions taken. Since FY2014, the Administration has continued to request additional funding for programs geared toward unaccompanied children, and Congress has appropriated for some but not all such requests.

Apprehensions of unaccompanied children rose substantially between FY2011 and FY2014 before declining considerably in FY2015. However, the increased number of apprehensions in FY2016 and the most recent apprehension data for the first few months of FY2017 suggest that the flow of unaccompanied children to the United States has not abated.

Once in the United States, the number of unaccompanied children who will ultimately qualify for asylum or other forms of immigration relief that may allow them to remain in the United States remains unclear. Many unaccompanied children have family members in the United States, many of whom may not be legally present. Such circumstances raise challenging policy questions that may pit what is in the “best interests of the child” against what is permissible under the Immigration and Nationality Act and other relevant laws.

## **Author Information**

William A. Kandel  
Analyst in Immigration Policy

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