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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 increased sharply, 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 Border Patrol apprehended 16,067 unaccompanied children at the Southwest border whereas in FY2014 more than 68,500 unaccompanied children were apprehended. In the first 8 months of FY2015, UAC apprehensions numbered 22,869, down 49% from the same period in FY2014.

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.

Several agencies in the Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR) share responsibility for the processing, treatment, and placement of UAC. DHS Customs and Border Protection (CBP) apprehends and detains unaccompanied children arrested at the border while Immigration and Customs Enforcement (ICE) handles custody transfer and repatriation responsibilities. ICE also apprehends UAC in the interior of the country and represents the government in removal proceedings. HHS 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, when the number of UAC apprehended at the Southwest border was 19,688, foreign nationals from Mexico accounted for 82% of all UAC apprehensions at the Southwest border and the three Central American countries accounted for 17% of these apprehensions. In FY2014, the proportions had almost reversed, with Mexican UAC comprising only 23% of UAC apprehensions and unaccompanied children from the three Central American countries comprising 77%.

To address the crisis, the 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; and in July, the Administration requested $3.7 billion in supplemental appropriations for FY2014 to address the crisis. Congress debated the supplemental appropriations but did not pass such legislation.

For FY2015, Congress appropriated nearly $1.6 billion for the Refugee and Entrant Assistance Programs in ORR, the majority of which is 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 permits 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. P.L. 114-4 also allows 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.

Congressional activity on two pieces of legislation in the 114th Congress (H.R. 1153 and H.R. 1149) would make changes to current UAC policy, including amending the definition of UAC, altering current law on the treatment of unaccompanied children from contiguous countries, and amending several asylum provisions that would alter how unaccompanied children who assert an asylum claim are processed, among other things. Several other bills have been introduced without seeing legislative activity (H.R. 191/S. 129, H.R. 1700, H.R. 2491, and S. 44).

CRS has published additional reports on this topic. For a depiction of how UAC are processed, see CRS Insight IN10107, *Unaccompanied Alien Children: A Processing Flow Chart*, by (name redacted). For a discussion of select factors that may have contributed to the surge in UAC migrating to the United States, see CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, coordinated by (name redacted) . For a report on answers to frequently asked questions, see CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*, by (name redacted) and (name redacted) . For information on country conditions, security conditions, and U.S. policy in Central America, see CRS Report R43702, *Unaccompanied Children from Central America: Foreign Policy Considerations*, coordinated by (name redacted)

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Background

In FY2014, the number of unaccompanied alien 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. During a June 2014 hearing, some Members of Congress, like the Administration, characterized the issue as a humanitarian crisis.[1]

In recent years, most unaccompanied children have originated from three Central American countries—Guatemala, Honduras, and El Salvador—and Mexico. The reasons why they migrate to the United States often are 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.[2] 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. These factors may have contributed to the surge in the number of UAC that were apprehended along the Southwest border in FY2014.

Critics of the Obama Administration, however, assert that the surge in UAC fleeing their home countries was due to a perception of relaxed U.S. immigration policy toward children.[3] They also cited a 2008 law[4] that treats UAC from contiguous countries differently than those from noncontiguous countries (see "Customs and Border Protection" below).

Unaccompanied alien[5] children are defined in statute as children who lack lawful immigration status in the United States,[6] 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.[7] 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[8] and unaccompanied.[9] Although most

[1] Senate Judiciary Committee hearing on *Oversight of the Department of Homeland Security*, June 11, 2014 (hereinafter referred to as *Senate Oversight Hearing).*

[2] See CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*.

[3] These critics often cite the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), 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 prior to a certain period as children 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*, 113th Cong., 2nd sess., June 11, 2014. For a discussion of S. 744, see CRS Report R43099, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S. 744*, by (name redacted) . For a discussion of DACA, see CRS Report RL33863, *Unauthorized Alien Students: Issues and "DREAM Act" Legislation*, by (name redacted)

[4] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).

[5] *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.

[6] 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.)

[7] 6 U.S.C. §279(g)(2).

[8] A juvenile is defined as an alien under the age of 18. 8 CFR §236.3. In this report, the terms "juvenile," "child," and "minor" are used interchangeably.

[9] 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 CFR §236.3(b)(1).

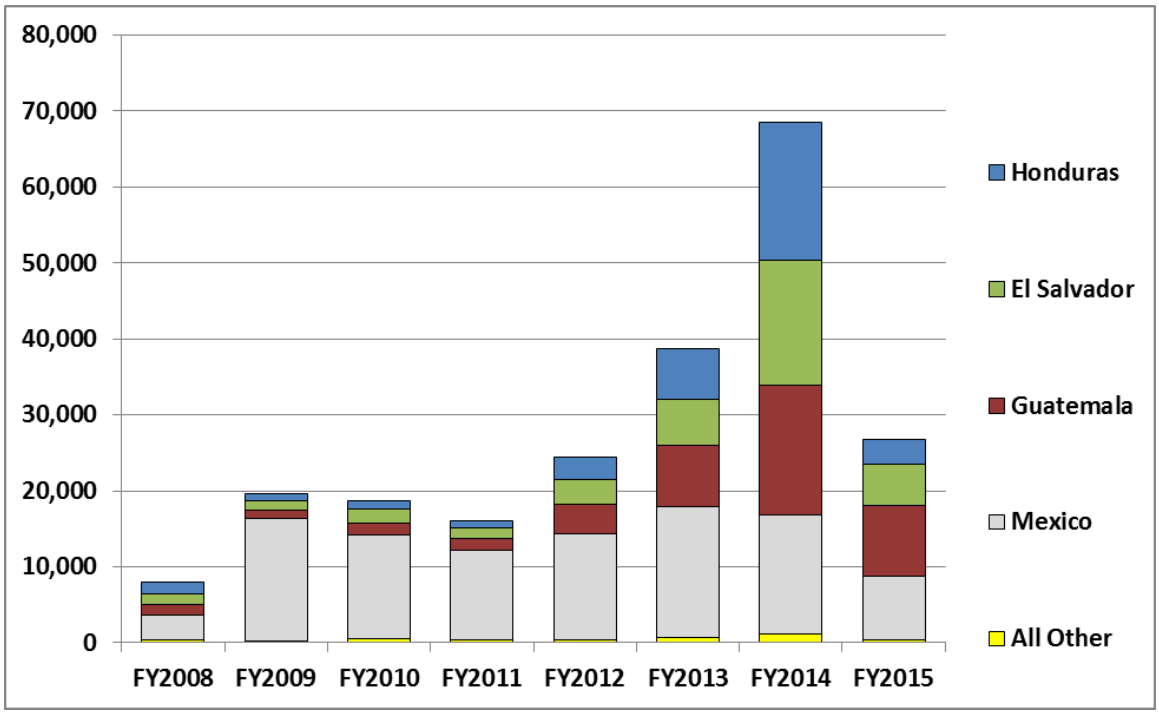
of these children are aged 14 or older, apprehensions of UAC under the age of 13 have increased.[10]

This report opens with an analysis of recent UAC apprehension data. It then discusses current policy on the treatment, care, and custody of the population, with a description of 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 ongoing action to address possible future surges.

Scope of the Problem

Since FY2011, UAC apprehensions have 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. 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 for the first 8 months numbered 22,869, representing a 49% drop from apprehensions during the same period in FY2014.[11]

Figure 1. UAC Apprehensions at the Southwest Border by Country of Origin, FY2008-FY2015



Sources: For FY2008-FY2013: U.S. Department of Homeland Security, United States Border Patrol, *Juvenile and Adult Apprehensions—Fiscal Year 2013*. For FY2014-FY2015, Customs and Border Protection, "Southwest Border Unaccompanied Alien Children," http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children.

[10] 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.

[11] Customs and Border Protection, "Southwest Border Unaccompanied Alien Children," http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children.

Notes: FY2015 figures represent eight months, from October 1, 2014, through June 1, 2015.

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 remained relatively steady. In contrast, UAC from Guatemala, Honduras, and El Salvador increased substantially starting in FY2011. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the three Central American countries accounted for 17%. By September 30, 2014, those proportions had almost reversed, with Mexican UAC comprising only 23% of the 68,541 UAC apprehensions and UAC from the three Central American countries comprising 75%.[12] The latter percentage dropped to 66% in the first eight months of FY2015.

The majority of UAC apprehensions have occurred within the Rio Grande and Tucson border sectors (73% and 12%, respectively, in FY2014).[13] The proportions of UAC who were female or who were under the age of 13 also increased in FY2014. Apprehensions of family units (unaccompanied children with a related adult) increased from 14,855 in FY2013 to 68,445 in FY2014. Of these apprehended family units, 90% originated from Guatemala, El Salvador, and Honduras.

Current Policy

Two laws and a settlement, discussed below, 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)[14] caused a series of lawsuits against the government that eventually resulted in the *Flores Settlement Agreement* (*Flores Agreement*) in 1997.[15] The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC while detained without a parent or legal guardian present.[16] It required that immigration officials detaining minors provide (1) food and drinking 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 regulations that had been drafted.[17]

[12] The surge in the number of children migrating to the United States mirrors a similar increase among adults. From FY2012 through FY2014, the number of Border Patrol apprehensions of third-country nationals has increased almost threefold from 54,098 to 153,055. Over the same period, those apprehended from Mexico decreased from 286,154 to 267,734. Source: USBP Southwest Border Apprehensions by Month, Requested Citizenship, Sector, FY2009 - FY2014TD through June, CBP unofficial data provided to CRS, July 2014.

[13] Customs and Border Protection, "Southwest Border Unaccompanied Alien Children," http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children.

[14] The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and its functions were split in the Departments of Homeland Security, Justice, and Health and Human Services.

[15] *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997).

[16] See DHS Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

[17] 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.

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). The HSA assigned apprehension, transfer, and repatriation responsibilities to DHS. The law assigned responsibility to HHS 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 things.[18] The HSA also established a statutory definition of UAC as unauthorized minors without the accompaniment of a parent or legal guardian. Despite these developments, criticism that the *Flores Agreement* had not been fully implemented continued.

In response to ongoing concerns that UAC who were apprehended by the Border Patrol were not being adequately screened to see if there was a reason that 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. 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 requires 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[19]

Several DHS agencies handle the apprehension, processing, and repatriating 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.

Customs and Border Protection (CBP) apprehends, processes, and detains the majority of UAC arrested along U.S. borders. Immigration and Customs Enforcement (ICE) physically transports UAC from CBP to HHS Office of Refugee Resettlement (HHS-ORR) custody. HHS-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. U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC. EOIR conducts immigration proceedings that 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

[18] 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.

[19] To see a flow chart of how UAC are processed, see CRS Report IN10107, *Unaccompanied Alien Children: A Processing Flow Chart.*

sections discuss the role of these federal agencies in apprehending, processing, detaining, and repatriating UAC.

Customs and Border Protection

The Office of Border Patrol (OBP)[20] and the Office of Field Operations (OFO)[21] are responsible for apprehending and processing UAC that come through a port of entry (POE) or are found at or near the border.[22] 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 that juveniles have entered the country illegally and unaccompanied, they are considered 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.[23] With the exception of Mexican and Canadian UAC who meet a set of criteria discussed below, the Border Patrol has to turn UAC over to ICE for transport to HHS-ORR within 72 hours.[24] 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).[25] In these cases, CBP personnel must screen each UAC within 48 hours 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
- the UAC is able to make an independent decision to voluntarily return to his/her country of nationality or last habitual residence.[26]

If, after assessing the UAC, 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

[20] OBP includes the Border Patrol. OBP and the Border Patrol are used interchangeably throughout this section.

[21] The OFO oversees CBP officers who inspect travelers and goods at ports of entry.

[22] When both OBP and OFO are referenced in this section, "CBP" is used.

[23] 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.

[24] The 72-hour time period was established in statute by the TVPRA.

[25] 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*, 112th Cong.,1st sess., September 13, 2011.

[26] P.L. 110-457, §235(a)(2)(A).

admission[27] and the minor can voluntarily return to his/her country of nationality or last habitual residence.

The TVPRA contains a number of 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 the contiguous countries with respect to the repatriation of their UAC. The agreements serve as a protection from trafficking and, at minimum, are required to include provisions pertaining to (1) the handoff of the minor children to an appropriate government official; (2) a prohibition against returning UAC outside of "reasonable business hours"; and (3) a requirement that the border personnel of the contiguous countries 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."[28] Since the issuance of this policy, non-governmental organizations (NGOs) have criticized the Border Patrol for failing to fully uphold the provisions in current law and the *Flores Agreement*.[29] Indeed, the DHS Office of Inspector General (OIG) issued a report in 2010 that concluded while CBP was in general compliance with the *Flores Agreement*, it needed to make improvements in certain areas with respect to its handling of UAC.[30]

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[31] asserted in its report that CBP does not adequately do this nor do they have training in place for their Border Patrol agents.[32]

Immigration and Customs Enforcement

ICE is responsible for the physical transfer of UAC from CBP to HHS-ORR. Additionally, ICE may apprehend UAC in the interior of the country during immigration enforcement actions. ICE is also responsible for representing the government in removal procedures before EOIR. Unaccompanied alien children who are not subject to TVPRA's special repatriation procedures

[27] In this case, the UAC is permitted to return immediately to Mexico or Canada, and does not face administrative or other penalties. 8 U.S.C. §1225(a)(4).

[28] UAC are held in "hold rooms" at Border Patrol stations. The 2008 memorandum, which is publically 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.

[29] 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*.

[30] Department of Homeland Security, Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

[31] *Children at the Border.*

[32] 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.

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 UAC in standard removal proceedings also are eligible to be granted voluntary departure under INA Section 240B at no cost to the child. 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.

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 the following:

- returning the UAC only during daylight hours;
- recording the transfer by making sure that the receiving government official or designee signs for custody;
- returning the UAC through a port designated for repatriation;
- providing the UAC the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.[33]

ICE notifies the country of every foreign national being removed from the United States.[34] The ability to affect a removal order is dependent on the ability of the U.S. government to secure travel documents for the alien being removed from the country in question.[35] As a result, the United States is dependent on the willingness of foreign governments to accept the return of their nationals. Each country sets documentary requirements for repatriation of their nationals.[36] While some countries allow ICE to use a valid passport to remove an alien (if the alien is in possession of one), other countries require ICE to obtain a travel document specifically for the repatriation.[37] According to one report, the process of obtaining travel documents can become problematic because countries often change their documentary requirements or raise objections to the return of a juvenile.[38]

Once the foreign country has issued travel documents, ICE arranges transport of the UAC and, if flying, accompanies the UAC on the flight to his/her home country. The majority of ICE's UAC removals are conducted by commercial airlines. ICE provides two escort officers for each UAC.[39] Mexican UAC are repatriated in accordance with Local Repatriation Agreements (LRA), which

[33] Email from ICE Congressional Relations, May 16, 2014.

[34] A country clearance is the process by which ICE notifies a foreign country, through the U.S. Embassy abroad, that a foreign national is being repatriated. Additionally, when an alien is being escorted by ICE personnel, the country clearance process is used to notify the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

[35] Conversation with Doug Henkel, Associate Director, ICE Removal and Management Division, February 20, 2012.

[36] 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.

[37] Annex 9 of the Civil Aviation Convention requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

[38] Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

[39] An additional officer is added for each group that exceeds five UAC. The gender of the officers corresponds to the gender of the children being repatriated. Email from ICE Congressional Relations, May 16, 2014.

require notification of the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).[40]

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, which made significant reforms to UAC policies, directed that HHS ensure that the UAC "be promptly placed in the least restrictive setting that is in the best interest of the child."[41] 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.[42] 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 minor would be at risk if he or she were returned to his/her country of nationality or last habitual residence, and if the UAC has a possible claim to asylum.[43]

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. 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.[44] According to ORR, the majority of the youth are cared for initially through a network of state-licensed ORR-funded care providers that provide classroom education, mental and medical health services, case management, and socialization and recreation.

The same care providers also facilitate the release of UAC to family members or other sponsors who are able to care for them.[45] 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/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.[46] 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.[47]

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[40] Ibid.

[41] §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(b)(2).

[42] 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.

[43] 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.

[44] Flores v. Reno Stipulated Settlement Agreement, 1997, p.10.

[45] Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, Fact Sheet, May 2014, http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf. (Hereinafter ORR UAC Fact Sheet, May 2014.)

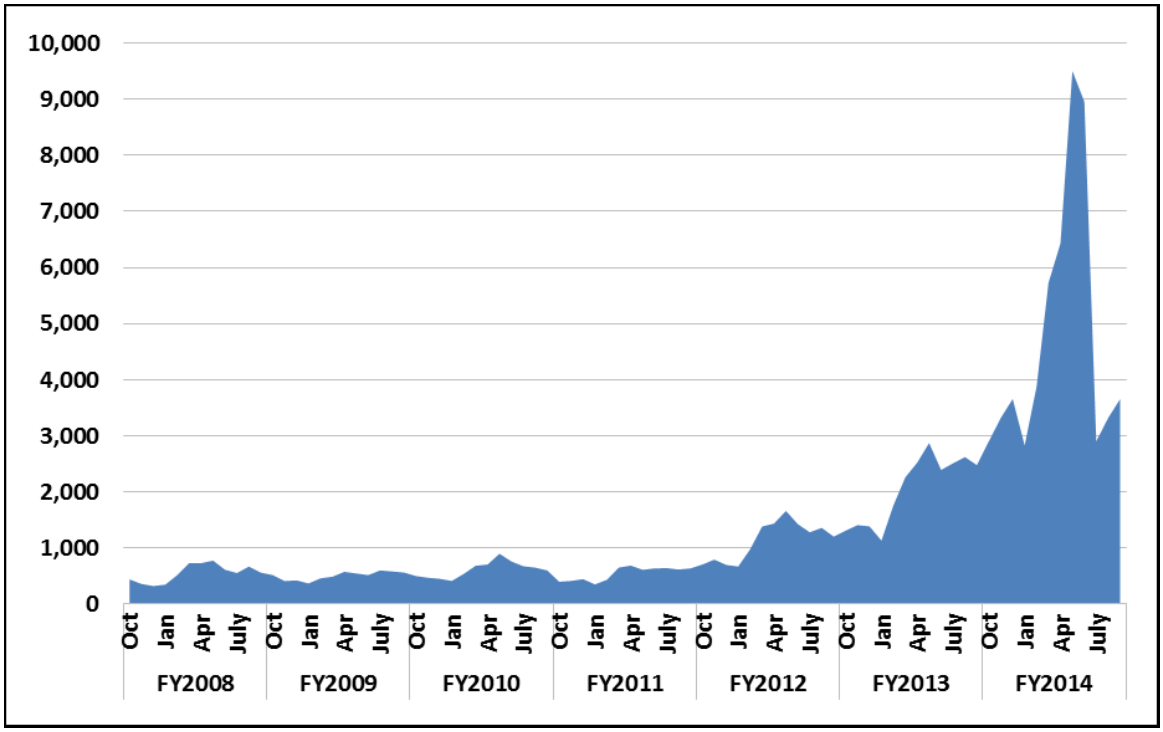
[46] Pursuant to the TVPRA of 2008, home studies are required for certain UAC considered especially vulnerable.

[47] 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.

A juvenile may be held in a secure facility only if he/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.[48]

Figure 2. UACs in ORR Custody, FY2008 Through FY2014

(monthly referrals)



Source: CRS presentation of unpublished data from the HHS Office of Refugee Resettlement.

Figure 2 uses data on monthly referrals to ORR to illustrate trends over time. It shows a sharp increase in UAC in ORR custody in FY2014. Monthly referrals were less than 1,000 until March 2012. By March 2013, monthly referrals to ORR surpassed 2,000, and the number hit 5,527 in March 2014. In June 2014, 10,128 UAC were transferred to ORR. In the first 4 months of FY2015, ORR reported 6,837 referrals of UAC.[49] Note that not all UAC are referred to ORR; for example, some UAC from contiguous countries voluntarily return home.

Of the children served, ORR reports that ultimately about 90% are reunified with their families.[50] 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.[51] In May 2014, ORR reported that the average

[48] Center for Human Rights & Constitutional Law, *Flores v. Meese: Final Text of Settlement Establishing Minimum Standards and Conditions for Housing and Release of Juveniles in INS Custody*, Exhibit 2 (1997).

[49] Office of Refugee Resettlement, *Unaccompanied Children Released to Sponsors By State*, accessed by CRS on March 17, 2015, http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors. Note that this total is not broken down by month and therefore is not included in **Figure 2**.

[50] Administration for Children and Families, Office of Refugee Resettlement, *Unaccompanied Alien Children Program, U.S. Department of Health and Human Services, Fact Sheet*, May 2014 (hereafter, *ORR UAC Fact Sheet*, May 2014.)

[51] Vera Institute Study, p. 17.

length of stay in the program was about 35 days.[52] It is important to note that removal proceedings continue even when UAC are placed with parents or other relatives.

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.[53] 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 the asylum application, even where evidence shows that the child reunited with a parent or legal guardian after CBP or ICE made the UAC determination. In addition, USCIS has initial jurisdiction over asylum applications filed by UAC with pending claims in immigration court, with cases on appeal before the Board of Immigration Appeals, or with petitions for review with federal courts as of when the TVPRA was enacted (December 23, 2008). UAC must appear at any hearings scheduled in immigration court even after filing for asylum with USCIS.

The Executive Office for Immigration Review

The U.S. Department of Justice Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases, including 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).

EOIR has specific policies for conducting the 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, the immigration judges are supposed to

- establish special dockets for UAC so that they 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; and
- employ child-sensitive questioning.

Under policy, immigration judges should strongly encourage the use of pro bono legal representation if the child is not represented.

On July 18, 2014, EOIR initiated a new case recording system that coincided with its announcement of its revised adjudication priorities in response to the UAC surge.[54] The system

[52] *ORR UAC Fact Sheet*, May 2014.

[53] For information on UAC and asylum, see CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*, by (name redacted) .

[54] The four priority categories are unaccompanied child, adults with a child or children detained, adults with a child or (continued...)

allows EOIR to track the outcomes of UAC with greater precision than in previous years.[55] CRS reviewed seven months of these EOIR data covering July 18, 2014, through February 24, 2015.[56] Of the 25,091 UAC who were given Notices to Appear (NTA) by DHS, 23,760 had been scheduled to appear for their first hearing. Of those scheduled, 15,633 were adjourned, 1,453 had changes of venues or were transferred, and in the remaining 6,090 cases, decisions were rendered by immigration judges. Of these decisions, 4,265 (70%) were removals and 3,775 (62%) were rendered *in absentia*, meaning that the UAC had not shown up to the hearing.

Administrative and Congressional Action

The Administration and Congress both took action in 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. It also 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. Relatedly, Congress increased funding for UAC-related activities in HHS/ORR and DHS appropriations for FY2015 and considered supplemental appropriations for FY2014.

Administrative Action

In response to the UAC surge, the Administration announced in June 2014 that it had developed a Unified Coordination Group comprised of representatives from key agencies responding to this issue.[57] Federal Emergency Management Agency (FEMA) Administrator Craig Fugate was named as the Federal Coordinating Official.[58] The FEMA administrator's role was to support the lead agencies, CBP and HHS/ORR, by bringing in capacity from throughout the federal government so the lead agencies can focus on their missions.[59]

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 when they were temporarily in DHS custody.[60] DHS coordinated with the Departments of Health and Human Services, State, and Defense, as well as the General Services Administration and other agencies,

(...continued)

children released on alternatives to detention, and recent border crossers whom DHS is detaining. 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, 113th Cong., 2nd sess., July 10, 2014.

[55] Prior to this system, EOIR only tracked the number of juveniles it processed and could not distinguish between UAC and other minors.

[56] Executive Office for Immigration Review, Unaccompanied Children Priority Code Adjudication, July 18, 2014-February 24, 2015, unpublished data provided to CRS, March 17, 2015.

[57] Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border.

[58] 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.

[59] Craig Fugate, Federal Coordinating Administration of the Inter-Agency Unified Coordination Group on UAC, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

[60] ICE is also focusing on dismantling the smuggling organizations who are smuggling UAC into the United States.

to ensure a coordinated and prompt response within the United States in the short term, and in the longer term to work with the sending countries to undertake reforms to address the causes behind the recent migration trends.[61] 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.[62]

To manage the influx of UAC, HHS/ORR made use of a network of 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, Texas, and at Naval Base Ventura County in Oxnard, California. Arrangements at both sites ended August 2014.[63]

In addition, the Corporation for National and Community Service (CNCS), which administers AmeriCorps,[64] 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.[65]

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.[66] The Administration also initiated a collaborative information campaign with Central American governments to inform would-be migrants on a variety of issues.[67]

Congressional Action

As the UAC crisis ensued in late spring and early summer 2014, initial congressional attention focused on the various agencies' resources and whether they had adequate funding to respond to the crisis. As the crisis began to wane, congressional attention shifted to mechanisms to prevent such a surge from happening again.

[61] Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border.

[62] 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.

[63] Leslie Berestein Rojas, "Emergency Shelter for Unaccompanied Migrant Kids Opening in Ventura County," *89.3 KPCC, Southern California Public Radio*, June 5, 2014, http://www.scpr.org/blogs/multiamerican/2014/06/05/16777/emergency-shelter-for-unaccompanied-migrant-kids-o/.

[64] For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding.*

[65] 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, http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cncs-announce-new-partnership-enhance.

[66] White House, Office of the Press Secretary, "Fact Sheet: Unaccompanied Children from Central America," http://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america.

[67] Ibid.

Appropriations

In the President's original FY2015 budget for the various agencies directly responsible for the UAC population (i.e., specifically in HHS/ORR and DHS budgets), the Administration did not request funding increases to help address what had been characterized as a strain on agency resources. However, on May 30, 2014, the Office of Management and Budget updated its cost projections related to the UAC crisis and requested a total of $2.28 billion for FY2015 for ORR's UAC program. For DHS agencies, the Administration's amended request included an additional $166 million for "CBP overtime, contract services for care and support of UAC, and transportation costs."[68]

On July 8, 2014, the Administration requested $3.7 billion in emergency appropriations, 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.[69] On July 23, 2014, Senator Mikulski introduced the Emergency Supplemental Act, 2014 (S. 2648). The bill would have funded the related agencies and its component parts at a lower amount than what was requested by the Administration. HHS's Administration for Children and Families would have received the largest appropriation, $1.2 billion, for its Refugee and Entrant Assistance Program to go toward the care of UAC. For CBP and the Office of Air and Marine, the act would have appropriated $320.5 million and $22.1 million, respectively; for ICE, the act would have appropriated $762.8 million to go toward transportation and enforcement and removal costs. S. 2648 would have appropriated $124.5 million for DOJ court activities related to the processing of UAC. For the Department of State's and the U.S. Agency for International Development's (USAID's) unaccompanied alien-related activities, however, the bill would have appropriated $300 million, the same amount the Administration requested. Congress did not pass S. 2648.

The Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) was enacted on December 16, 2014. The act provided nearly $1.6 billion for Refugee and Entrant Assistance Programs for FY2015. The joint explanatory statement accompanying P.L. 113-235 expressed an expectation that the majority of these funds would be directed toward the UAC program.[70] 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% via transfers from other discretionary HHS funds.[71]

The Department of Homeland Security Appropriations Act, FY2015 (P.L. 114-4) provided $3.4 billion to ICE for detection, enforcement, and removal operations, including for the transport of unaccompanied children for CBP.

In the "General Provisions" of the Homeland Appropriations Act of 2015, Section 569 sets forth a requirement that DHS submit a proposal with the annual budget that estimates the number of

[68] Executive Office of the President Office of Management and Budget memo to Representative Nita Lowey, May 30, 2014.

[69] 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.

[70] 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*.

[71] This paragraph was excerpted from CRS Report R43967, *Labor, Health and Human Services, and Education: FY2015 Appropriations.*

unaccompanied children the agency anticipates will be apprehended that fiscal year, along with the number of agent or officer hours and related costs required to manage the workload.

Section 571 of the act permits 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 allows for State Homeland Security Program and Urban Area Security Initiative 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.[72]

Legislation and FY2016 Appropriations

Several pieces of legislation have been introduced in the current Congress; however, only two have seen legislative activity. On March 18, 2015, the House Judiciary Committee marked up the "Asylum Reform and Border Protection Act of 2015" (H.R. 1153); and on March 4, 2015, the House Subcommittee on Immigration and Border Security marked up the Protection of Children Act of 2015 (H.R. 1149). Additionally, both chambers reported a DHS appropriations bill out of committee. This section will discuss the bills that have seen legislative activity.

The Asylum Reform and Border Protection Act of 2015 (H.R. 1153)

The Asylum Reform and Border Protection Act of 2005 (H.R. 1153) would make several changes to current UAC policy. Among them, H.R. 1153 would amend the definition of UAC.[73] The current UAC definition requires that in order for a minor to be deemed unaccompanied, he or she must have no parent or legal guardian available to provide care and physical custody to the minor. H.R. 1153 would amend the language to add, in addition to no parent or legal guardian, that there are no siblings, aunts, uncles, grandparents, or cousins over the age of 18 available to provide care and physical custody to the unaccompanied minor. The act would also provide that the term *unaccompanied alien child* would cease if any person in the aforementioned category is found in the United States and is available to provide care and physical custody to the minor.

H.R. 1153 would amend asylum provisions by treating unaccompanied children who may be seeking asylum in another country similar to other (adult) asylum seekers. The so-called Safe Third Country provision requires aliens seeking asylum to make such a claim in the first country in which they arrive. Under current law, UAC are not subject to the Safe Third Country requirement. H.R. 1153 also would require, under most circumstances, UAC to file their asylum claim within one year after arriving in the United States. Under the bill, USCIS would no longer be given initial jurisdiction over UAC asylum petitions.

H.R. 1153 would amend current law by requiring agencies to notify HHS within seven days of the apprehension or discovery of unaccompanied children. (Current law requires such notification to take place within 48 hours.) It also would require the transfer of custody of unaccompanied

[72] For FY2016, the Administration has requested $2.6 million in contingency funding for ICE's Transportation and Removal Program; $203 million plus $24 million in contingency funding for CBP, $50 million (two-year funding) for EOIR, and $967 million for HHS-ORR including $19 million in contingency funding for ORR's Refugee and Entrant Assistance Program. 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.*

[73] 6 U.S.C. (g)(2)

children to HHS no later than 30 days after determining that the minor is a UAC. (Current law requires such transfer to occur no later than 72 hours.)

The Protection of Children Act of 2015

The Protection of Children Act of 2015 (H.R. 1149) would amend current law[74] by requiring unaccompanied children from noncontiguous countries to be returned immediately to their country of origin if they are deemed not to be a victim of or at risk of being a victim of trafficking or they do not have a fear of returning. (Under current law, the immediate repatriation requirement applies only to unaccompanied children from contiguous countries.) The act also would amend current law by removing language that requires unaccompanied children to *independently* decide if they want to withdraw their application for admission.[75]

H.R. 1149 would amend current law to require the Secretary of State to negotiate repatriation agreements between the United States and any foreign country the Secretary deems appropriate. (Under current law, the Secretary is able to negotiate such agreements only with contiguous countries.)

H.R. 1149 sets forth a time period for unaccompanied children who do not meet the screening requirements[76] to be placed in removal proceedings. It also differentiates between UAC who did not meet the screening requirements and those that did meet such requirements, mandating the former to be transferred to HHS no later than 30 days after failing to meet such requirements (it does not specify a time period for the transfer of UAC who met the screening requirements). Like H.R. 1153, H.R. 1149 would no longer give USCIS initial jurisdiction over the asylum petitions of unaccompanied children.

H.R. 1149 would require HHS to provide DHS with identifying information of the individual with whom the unaccompanied children will be placed. For unaccompanied children who were apprehended on or after June 12, 2012, and before the enactment of the act, H.R. 1149 would require HHS to provide such information to DHS within 90 days of the act's enactment.

In addition, H.R. 1149 would require DHS to investigate any unknown immigration status of the individuals with whom unaccompanied children are placed. If the individual is unlawfully present in the country, the act would require DHS to initiate removal proceedings.

H.R. 1149 also would amend current law to clarify that unaccompanied children, "to the greatest extent practicable," should have *acces*s to counsel but not at the government's expense.

Appropriations

As previously mentioned (see **Figure 1**), the number of unaccompanied children apprehended at the border during the first eight months of FY2015 is one-third of the number that was apprehended by the end of FY2014. The Administration, however, requested contingency funding in its FY2016 budget for several agencies in the event that there is another surge in FY2016.

[74] 8 U.S.C. 1232.

[75] By withdrawing his or her application for admission, the alien would not be subject to enforcement action.

[76] Under current law, contiguous-country unaccompanied children must be screened for whether they have been victims 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; a possible claim to asylum; and whether they can independently decide to voluntarily return to his/her country of nationality or last habitual residence. P.L. 110-457, §235(a)(2)(A).

For the Unaccompanied Children (UC) program (located in the Refugee and Entrant Assistance program in HHS), the Administration requested $948 million in base funding and $400 million in contingency funding. H.R. 3020, however, would provide $818 million and S. 1695 would provide $750 million for the UC program. Neither bill includes amounts for contingency funding. The Senate committee noted the expected decrease in apprehensions of unaccompanied minor in FY2016 and the unexpended amount in FY2014 due to lower than estimated costs of caring for the population as the reason for its recommended amount.

The Administration requested up to $134 million for FY2016 for a UAC Contingency Fund (fund) in CBP and up to $27.6 million for such a fund in ICE if the number of UAC apprehended exceeds the number that were apprehended in FY2015. The CBP fund would be used for costs associated with the apprehension and care of unaccompanied children and the ICE fund would be used for transportation costs. Neither the Senate-reported bill[77] nor the House-reported bill[78] would provide an appropriation for the funds for FY2016.

The House-reported bill, however, would extend a provision in the FY2015 bill that permits the Secretary of DHS to use several homeland security grants to provide humanitarian relief to unaccompanied children (and to families).

Policy Challenges

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 crisis with programs geared toward unaccompanied children from several Central American countries. Additionally, Congress increased funding for the HHS program that is primarily 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 things.

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, large proportions of which may not be present legally. 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.

[77] S. 1619

[78] H.R. 3128

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