

# Protecting Migrant Children Fleeing from Central America

October 2014

In recent months there has been an unprecedented increase in the number of children fleeing their home countries in Central America to seek refuge in surrounding countries, including the United States. This document provides an overview of who these children are, the reasons for their mass migration, the current process youth undergo once they arrive in the United States, and recent efforts by the Federal government to address the crisis. The document concludes with recommendations for the government agencies responsible for ensuring the safety and overall well-being of these vulnerable children.

## What is the Definition of an “Unaccompanied Alien Child” under U.S. Federal Law?

Migrant children who enter the United States alone or with other minors are classified as unaccompanied alien children (UAC). The federal definition for an unaccompanied alien child (UAC) is “a child who has no lawful immigration status in the United States; has not attained 18 years of age; and, with respect to whom, there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody.”<sup>1</sup>

## How Many Children are Coming and What are the Trends?

Recent data collected by the Department of Homeland Security (DHS) reveals that since October 1, 2013, over 63,000 children have fled from their home countries into the United States.<sup>2</sup> This number represents a significant influx as compared with previous years. Before FY 2011, the average number of unaccompanied children coming into the United States ranged from 6,000-8,000. In FY 2012, that number rose to 13,625, and continued to grow with 24,668 children entering in FY 2013. It was projected that the number of children entering the United States in FY 2014 would reach 60,000.<sup>3</sup>

The majority of the children arriving are from Guatemala, El Salvador, and Honduras. More girls are migrating than in previous years due to regional increases in gender-based violence.<sup>4</sup> Many of the girls are pregnant or parenting teens, often victims of rape in their home countries or during their journey. Similarly, the number of young children under the age of 13 migrating alone, some as young as 4-years-old, has also increased.<sup>5</sup>

## Why Are the Children Fleeing?

The UN High Commissioner for Refugees (UNHCR) recently released a comprehensive report that interviewed over 400 children who have recently entered the United States as unaccompanied children. The report found that the main reasons cited by the children who fled their home countries were push factors such as extreme violence and exploitation in their home communities. The lack of state protection from drug traffickers, gangs, as well as increasing poverty and unemployment further exacerbate the humanitarian crisis in the region. In Mexico, children reported that human smugglers aggressively target children, and across the region it was reported that gangs also regularly recruit children as young as ten years old. Children also reported abuse by caretakers, sexual violence, deprivation, regularly witnessing atrocities, and hope for reunification with their families as reasons of coming to the United States.<sup>6</sup> On their arduous and dangerous journey, many children become victims of trafficking, sexual abuse, and violence.<sup>7</sup>

The complex reasons causing the mass exodus of children represents an international humanitarian situation. Of the children who have recently arrived to the U.S., UNHCR estimates that nearly two-thirds qualify for international protection due to violence and abuse in their home countries. Children are seeking asylum in countries other than the United States as well. Contiguous countries to El Salvador, Guatemala, and Honduras such as Mexico, Panama, Nicaragua, Costa Rica and Belize have also seen a dramatic increase in the number of child asylum-seekers.<sup>8</sup>

### What Is the Process for Children When They Are Apprehended By the U.S. Government?

Children entering the United States that have been identified as “unaccompanied” undergo a multi-step process through various government agencies. Below are the basic procedures that must be followed:

1. Once a child has been apprehended by Customs and Border Patrol (CBP), officials identify the child, perform a health screening, and initiate removal proceedings. CBP has 72 hours to conduct this process and the child is held in a detention facility during this period.
2. If the child is identified as unaccompanied, they are transferred to the custody of Health and Human Service’s (HHS) Office of Refugee Resettlement (ORR). Prior to passage of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Mexican children apprehended at the border were often immediately returned to Mexico while Central American children and those from other non-contiguous countries have been automatically referred to ORR. The TVPRA of 2008 required CBP to screen for certain vulnerabilities within 48 hours before repatriating Mexican children. However, the number of Mexican children referred to ORR remains relatively low, creating concerns that children are falling through the cracks.<sup>9</sup>
3. The child remains in the custody of ORR where he or she is provided with shelter care and options are explored on a case-by-case basis to identify a sponsor, family member or foster care placement for the child.
4. Once a proper placement is identified, the child is released to the care of a sponsor pending the outcome of the immigration process to determine whether they will be granted a form of humanitarian relief or be removed. Children are not guaranteed legal representation in immigration court.<sup>10</sup>

### What Has Been the Federal Response to Address the Influx?

The Administration has taken several steps to address the unprecedented surge in child migrants, and Congress has also made efforts to provide additional funding through the appropriations process. The following is a brief timeline of Federal government actions as of June 18, 2014:

#### Executive Action:

- On June 2, 2014, a Presidential Memorandum-Response to the Influx of Unaccompanied Alien Children Across the Southwest Border was issued. The Memorandum directs the Department of Homeland Security to establish an interagency Unified Coordination Group headed by the Federal Emergency Management Agency (FEMA), which will provide humanitarian relief to affected children, including housing, care, medical treatment and transportation.<sup>11</sup>
- On June 6, 2014, The Obama Administration announced that \$2 million in grants would be awarded under the “justice AmeriCorps” program, launched in partnership by the Department of Justice (DOJ) and the Corporation for National and Community Service. The grants will be awarded to legal service providers to enhance and make more efficient immigration proceedings for unaccompanied children who have crossed the U.S. border. <sup>12</sup> While this program is a step in the right direction, there are concerns regarding the limited experience of the lawyers, the one-year service period, and the restrictions to providing counsel to youth 16 and older.
- On June 6, 2014, HHS announced that \$350 million would be awarded in grants for shelters to house and provide services for unaccompanied children. A number of requirements are listed in the funding opportunity including grantees to provide case management services, education, counseling, individualized needs assessment, medical and mental health services, etc.<sup>13</sup> As of June 2014, three military bases were being used to hold children, including Lackland Air Force Base (San Antonio, Texas), Naval Base Ventura (Oxnard, CA), and Fort Sill (Oklahoma). There are concerns that children will remain in large institutional settings for long periods of time or be released without adequate screening of potential sponsors, both of which pose risks for child safety.

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- On June 15, 2014, Vice President Biden announced plans to meet with leaders in Honduras, Guatemala, and El Salvador to discuss joint strategies for addressing the child refugee crisis. The Administration has also announced that it will be ramping up efforts to address the violence and instability being caused by drug traffickers and gangs in the region.
- On June 20, 2014 The White House released “Fact Sheet: Unaccompanied Children from Central America,” which outlines future investments in Central America, aimed at stemming the flow of children arriving from the region. The fact sheet also discusses increasing enforcement measures, such as using family detention centers, and steps to expedite removal proceedings.<sup>14</sup>
- Two family detention centers were opened in Artesia, New Mexico and Karnes, Texas, and the Administration recently announced the construction of the largest family detention center (with capacity for 2,400 beds) in U.S. history to be opened in Dilley, Texas in December.
- On June 30, 2014, President Obama sent a letter to Congressional leadership describing the activities of the Administration thus far and outlining more aggressive actions including: providing the DHS secretary additional authority in processing and repatriating children to Central America, increasing border security, reassigning immigration judges to the border, and a deterrence strategy focused on the removal and repatriation.<sup>15</sup>
- On July 8, 2014, President Obama submitted a \$3.7 billion supplemental appropriations request to Congress to address the crisis. This would expand capacity and increase resources for the U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of State and the U.S. Department of Health and Human Services.
- On September 30<sup>th</sup>, HHS announced the award of over \$4 million in supplemental grants to the United States Conference of Catholic Bishops (USCCB) and the U.S./ Committee for Refugees and Immigrants (USCRI) under the Unaccompanied Alien Children’s Program to support post-release legal services. Cities to be served include Los Angeles, Miami, Baltimore, Arlington, VA, Memphis, New Orleans, Phoenix, Dallas, and Houston.

### Congressional Action:

- On June 10, 2014, Senator Harkin introduced a bill that provides \$1.94 billion to HHS to address the surge of unaccompanied children. The Labor-HHS bill with this provision has been approved by the sub-committee but is pending passage by the full Senate Appropriations Committee.<sup>16</sup>
- June 19, 2014, Senators Menendez (D-NJ), Dick Durbin (D-IL), Mazie Hirono (D-HI), and Representatives Luis Gutierrez (D-IL) and Lucille Roybal-Allard (D-CA) announce “A Plan to Address the Humanitarian and Refugee Crisis on the Southern Border and in Central America.” The plan highlights the need for the Administration to focus on anti-smuggling and combat criminal activities in Central America, meet international and domestic legal requirements in the treatment of refugee and asylum-seeking children, and support policies of good governance and economic and social development in Central America.<sup>17</sup>
- On June 23, 2014, Congressman Hakeem Jeffries (NY-8) introduced H.R. 4936, the Vulnerable Immigrant Voice Act, a bill that ensures legal representation during immigration proceedings for unaccompanied migrant children and migrants with serious mental disabilities.<sup>18</sup>
- On June 24, 2014, the House Committee on Homeland Security held a hearing entitled “Dangerous Passage: The Growing Problem of Children Crossing the Border.” Jeh Johnson, DHS Secretary, W. Craig Fugate, and Administrator from the Federal Emergency Management Agency (FEMA) and Ronald D. Vitiello, Deputy Chief of the U.S. Customs and Border Protection testified about the efforts being made at the border to address the crisis. These efforts include increasing detention capacity, increasing personnel, and coordination with other agencies.

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- On June 25, 2014, the House Judiciary Committee held a hearing entitled “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors.” The hearing focused on how the Administration’s policies may be the cause of the recent influx of child migrants.
- On June 25, 2014, the House Committee on Foreign Affairs held a hearing entitled “Children Migrating from Central America: Solving a Humanitarian Crisis. Francisco Palmieri, Deputy Assistant Secretary at the U.S. State Department testified on the State Department’s public outreach campaigns in Central America to discourage migration to the United States as well as working with foreign leaders to ensure the safety of these children. In addition, Mark Lopes, the Deputy Assistant Administrator for Latin America and the Caribbean testified about the investments USAID is making in Honduras, El Salvador, and Guatemala to address the root causes of crime and violence.
- On July 10, 2014, the Senate Appropriations Committee held a hearing on unaccompanied minor children to consider the President’s emergency supplemental request. The witnesses include DHS Secretary Jeh Johnson, HHS Secretary Sylvia Mathews Burwell, and Thomas A Shannon, Jr., Counselor for the Department of State.
- On July 16, 2014, the Senate Committee on Homeland Security and Governmental Affairs held a hearing entitled “Challenges at the Border: Examining and Addressing the Root Causes Behind the Rise in Apprehensions at the Southern Border” to examine the factors in Central America that are causing children to flee their homes and come to the United States. Witnesses included Michael Shifter from Inter-American Dialogue, Eric L. Olson from the Woodrow Wilson International Center for Scholars, Eric Farnsworth from Americas Society/Council of Americas, Richard Jones from Catholic Relief Services and Bryan Roberts from Econometrica, Inc.
- On July 17, 2014, the Senate Committee on Foreign Relations held a hearing entitled “Dangerous Passage: Central America in Crisis and the Exodus of Unaccompanied Minors,” which explored the U.S. State Department’s actions as well what the U.S. Department of Justice is doing to deal with the crisis.
- Members of Congress have also put forth several proposals recently that largely roll back legal protections enacted under the TVPRA. Under current law, the TVPRA ensures children from Central America are transferred to the care of ORR and given the opportunity to present their case at a formal removal hearing. The proposals would empower non-legal officials to determine whether the child has a credible claim to stay in the United States. In addition, these proposals fail to address safe repatriation of children who are returned to their home countries, providing legal representation for children, and how to address the root causes of the influx. One such bill is the Helping Unaccompanied Minors and Alleviating National Emergency (HUMANE) Act (S.2611/H.R.5114), which was introduced on July 16, 2014 by Senator John Cornyn (R-TX) and Representative Henry Cuellar (D-TX).
- On July 23, 2014 Chairwoman of the Senate Appropriations Committee Barbara Mikulski (D-CA) introduced a supplemental emergency funding bill, S. 2648, which includes \$2.7 billion to address the border crisis. The funding would support the Office of Refugee Resettlement (ORR) to ensure that unaccompanied children’s needs are met through the end of the year. It also provides more funding to the Department of Justice than under the President’s original request to strengthen the capacity of immigration courts and to provide legal representation for children. The main concern with S. 2648 is its explicit mention of funding to sustain family detention centers, such as the one recently opened in Artesia, NM and the one scheduled to open in Karnes, TX in August. On the evening of July 31, 2014 the Senate took a procedural vote to advance the bill. The measure failed 50-44.
- On July 29, 2014, House Appropriations Committee Chairman Harold Rogers (R-KY) introduced H.R. 5230, the Southwest Border Supplemental Appropriations Act. The bill amends the 2008 TVPRA by weakening screening mechanisms and due process rights for children from non-contiguous countries, requires children to stay in detention longer than necessary, expedites removal proceedings, and further restricts children’s access to legal counsel. The proposal also fails to adequately protect children who have to return home and face the dangers of violence caused by drug traffickers and gangs in the region. On the evening of August 1, 2014, the House passed the bill 223-189.

### Recommendations

The current influx of child migrants from Central America must be recognized by policymakers as an international humanitarian situation, and solutions must focus on protecting these vulnerable children and preserving their rights, as well as addressing the root causes for their forced migration. First Focus is advocating for a comprehensive, inter-agency government response that prioritizes the best interest of the child at all stages of the immigration process. Some specific recommendations include:

- All the federal agencies that deal with unaccompanied children, DHS, DOJ, and HHS should adopt a best interest of the child standard to consistently guide all decisions made regarding the care of unaccompanied children as well as their eligibility for humanitarian relief.
- Congress should increase funding levels to HHS/ORR, DHS, DOJ and other relevant agencies so that adequate resources are available to ensure that children are receiving proper treatment and services that reflect their unique needs and vulnerabilities.
- Congress should strengthen screening and due process mechanisms for children apprehended by CBP. CBP should contract with child welfare experts to screen children along the border so that children are properly evaluated for trafficking and other humanitarian concerns and connected to services. Congress should reject recent proposals by the Administration to change the statutes regarding the process for unaccompanied children from non-contiguous countries in order to expedite removal proceedings as these changes undermine child safety and due process.
- Effective and cost-efficient alternatives to detention should be used whenever possible for families. Family detention centers should not be used as research shows that such settings are inappropriate for children and harmful to the parent-child relationship.
- DHS and HHS/ORR should ensure that temporary CBP holding facilities and emergency shelters meet the required humanitarian standards for children set forth in the *Flores. v. Reno* settlement and the TVPRA and codify these standards in DHS regulations.<sup>19, 20</sup> Requirements include providing access to toilets and sinks, drinking water and food, medical assistance, adequate temperature control and ventilation, adequate supervision of minors, and contact with family members.
- ORR should ensure that children are placed into community-based care whenever possible, including placement with parent or relative sponsors, and strengthen screening mechanisms for sponsors to ensure children are being placed in safe and appropriate settings. When community-based care is not an option, children should be placed in proper facilities and other settings that are adequately equipped to meet the medical, mental health and other special needs of children, as well as pregnant and parenting teens, rather than placing children in large institutional settings.
- ORR should improve and expand the follow-up services provided to children and their sponsors once they are released from federal custody to ensure their safety and well-being. Follow-up services should include home studies, medical and mental health services, legal services, and educational development.
- All migrant children placed into removal proceedings should be provided legal representation and child advocates to increase their chances for obtaining immigration relief and to ensure consideration of their best interests.
- The Department of State, in partnership with over relevant governmental and nongovernmental agencies in the U.S. and in the sending countries, should develop a program focused on the safe and successful repatriation and reintegration of children that are returned to their home countries. Repatriation programs must provide wrap-around follow-up services to children and their families and/or sponsors in the home country. Reintegration programs should include youth violence and gang prevention components as well as workforce development.



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- Foreign aid should be targeted to address the instability and violence being caused by drug traffickers and smugglers in Honduras, Guatemala, El Salvador, and Mexico, and a comprehensive strategy in partnership with governments in the region should be developed that is focused on restoring children’s safety, rights, and opportunity in their home countries.
- Congress should establish a bicameral and bipartisan committee focused on developing strategies to meet the needs of child refugees and address the root causes of the child migration crisis.

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<sup>1</sup> 6 U.S.C. § 279(g)(2)(2012).

<sup>2</sup> Southwest Border Unaccompanied Children, U.S. Customs and Border Protection (July, 2014) <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

<sup>3</sup> Lisa Frydman, Elizabeth Dallam, Blaine Bookey, Center for Gender & Refugee Studies and Kids in Need of Defense, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, (2014).

<sup>4</sup> Julia Preston, *New U.S. Effort to Aid Unaccompanied Child Migrants*, New York Times, June 2, 2014 Available at: [http://www.nytimes.com/2014/06/03/us/politics/new-us-effort-to-aid-unaccompanied-child-migrants.html?\\_r=1](http://www.nytimes.com/2014/06/03/us/politics/new-us-effort-to-aid-unaccompanied-child-migrants.html?_r=1)

<sup>5</sup> Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection, UNHCR (2014).

<sup>6</sup> *Id.* pg. 7.

<sup>7</sup> Lisa Frydman, Elizabeth Dallam, Blaine Bookey, Center for Gender & Refugee Studies and Kids in Need of Defense, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, (2014).

<sup>8</sup> *Id.* pg. 4

<sup>9</sup> Cervantes, Wendy & Mathur, Richa. First Focus, “Legal Protections for Unaccompanied Minors In the Trafficking Victims Protection Act.” July 2014.

<sup>10</sup> Olga Byrne, Elise Miller, The Vera Institute for Justice, The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers(2012).

<sup>11</sup> The White House, Presidential Memorandum- Response to the Influx of Unaccompanied Alien Children Across the Southwest Border, June 2, 2014. Available at: <http://www.whitehouse.gov/the-press-office/2014/06/02/presidential-memorandum-response-influx-unaccompanied-alien-children-acr>

<sup>12</sup> The Department of Justice (June, 6, 2014) Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors [press release]. Retrieved from <http://www.justice.gov/opa/pr/2014/June/14-ag-609.html>

<sup>13</sup> U.S. Department of Health and Human Services. Administration for Children and Families. *Residential Services for Unaccompanied Alien Children, Office of Refugee Resettlement*, HHS-2015-ACF-ORR-ZU-0833, June 6, 2014. Available at:

<http://www.cnsnews.com/sites/default/files/documents/HHS%20Grant%20Illegal%20minors.pdf>

<sup>14</sup> <http://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america>

<sup>15</sup> Text of a Letter from the President to the Speaker of the House of Representatives, Majority Leader of the Senate, Republican Leader of the Senate and the Democratic Leader of the House of Representatives, June 30, 2014.

<sup>16</sup> Erik Wasson, *Senate to provide 1.9 billion for rise in child migrants*, The Hill, June 10, 2014. Available at: <http://thehill.com/policy/finance/208840-senate-to-provide-19b-to-handle-spike-in-child-migrants>

<sup>17</sup> Sens. Menendez, Durbin, Hirono, and Reps. Guitierrez and Roybal-Allard Discuss Humanitarian and Refugee Children Crisis at the Border, June 19, 2014. <http://www.menendez.senate.gov/newsroom/press/sens-menendez-durbin-hirono-and-reps-gutierrez-and-roybal-allard-discuss-humanitarian-and-refugee-children-crisis-at-the-border>

<sup>18</sup> H.R. 4936, 113<sup>th</sup> Cong. (2014).

<sup>19</sup> Stipulated Settlement Agreement at 7, *Flores v. Reno* (1997). Available at:

<http://immigrantchildren.org/cases/FLORES%20CASE/Flores%20Procedural%20Docs/FloresStpultdSetlmt%20AGMT.pdf>

<sup>20</sup> The Flores Settlement, born out of a class action brought by the ACLU against the INS sets standards of how a minor in the custody of the INS should be treated. On June 11<sup>th</sup>, several prominent Civil Rights groups filed a complaint against DHS citing over 100 instances of abuse and mistreatment of unaccompanied children in the custody of CBP. The complaint alleges that CBP is not complying with the standards set forth by the law.