

PROTECTING REFUGEE CHILDREN FROM CENTRAL AMERICA

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Since early 2012, the number of children fleeing the Northern Triangle of Central America to seek refuge in the U.S. and other surrounding countries has reached unprecedented highs. This brief 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.

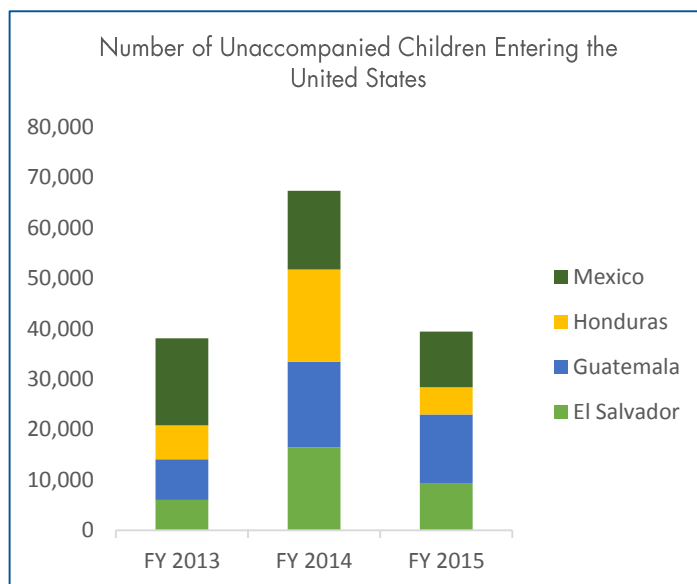
What is the definition of an “Unaccompanied Alien Child” under U.S. federal law?

Migrant children who enter the United States alone or with other minors are classified as unaccompanied alien children (UAC). The federal definition for 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.”¹

How many children are coming and what are the trends?

Over the course of fiscal year (FY) 2014 and FY 2015, the U.S. Customs and Border Patrol (CBP) recorded the arrival of 106,738 unaccompanied children entering the United States from its Southwest Border. This marked a significant increase compared to years past. Before FY 2011, the average number of unaccompanied children coming into the United States ranged from 6,000-8,000 per year. In FY 2012, that number rose to 13,625, and continued to grow with 24,668 children entering in FY 2013.

By country, in FY 2014, 16,404 unaccompanied children arrived from El Salvador, 17,057 from Guatemala, 18,244 from Honduras and 15,634 from Mexico. Those numbers dropped in FY 2015, with 9,389 arriving from El Salvador, 13,589 from Guatemala, 5,409 from Honduras and 11,012 from Mexico—almost 28,000 less children.²



While the numbers of unaccompanied children entering the United States is quite significant on its own, it does not capture the full extent of the Central American child refugee crisis. In addition to unaccompanied children, CBP also tracks the number of family units arriving in the United States from Central America. A family unit is defined by CBP as the number of

individuals (either a child under 18, parent, or legal guardian) apprehended with a family member by CBP. In FY 2014, 66,973 family units were recorded. In FY 2015, 29,639 family units were recorded.

The exact number of children included in family units is not known, but these data suggest that many more children are affected by the humanitarian crisis than just those designated as “unaccompanied.” While there has been a decrease in the overall number of unaccompanied children and family units coming to the United States between 2014 and 2015, studies show that the number of apprehensions in Mexico has actually increased by 50 percent during the same period.³

The majority of the children who have arrived during this influx are from Guatemala, El Salvador, and Honduras, also known as the Northern Triangle of Central America. More girls are migrating than in previous years due to regional increases in gender-based violence.⁴ 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.⁵

Why are the children fleeing?

The United Nations High Commissioner for Refugees (UNHCR) released a comprehensive report that interviewed over 400 children who have 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 10-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.⁶ On their arduous and dangerous journey, many children become victims of trafficking, sexual abuse, and violence.⁷

The complex reasons causing the mass exodus of children represents an international humanitarian situation. Of the children who have recently arrived to the United States, 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.⁸

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 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. During the height of the influx in 2014, CBP was unable to meet this requirement within the mandated 72 hours.⁹
2. If the child is identified as unaccompanied and is from a non-contiguous country, he or she is transferred to the custody of the U.S. Department of Health and Human Service’s (HHS) Office of Refugee Resettlement (ORR). For unaccompanied children from Mexico, the *Trafficking Victims Protection Reauthorization Act of 2008* requires CBP to screen for certain vulnerabilities within 48 hours before repatriating Mexican children. In order to refer the child to ORR’s custody, the child must fall into one of the following categories:
 - Is a trafficking victim or is at risk of trafficking if referred to home country;
 - Has a credible fear of return to their home country; or

- Cannot make an independent decision to withdraw their application of admission.¹⁰

Despite these criteria for admittance, the number of Mexican children referred to ORR remains relatively low, creating concerns that children are falling through the cracks.¹¹

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. While in ORR custody, the basic needs of the child must be met including suitable shelter, clothing, and food. In addition, physical and mental health services, contact with family members, educational services, and information about legal services are also to be provided to the child.¹²
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 he or she will be granted a form of humanitarian relief or be removed. ORR conducts a background check on potential sponsors and requires the completion of a family reunification packet. The level of the background check is dependent on the relationship the sponsor has with the child and whether they present any risk factors. ORR may conduct a public records check, an immigration status check, a national FBI criminal history and a child abuse and neglect check. Once released, only some children receive post-release services and are not guaranteed legal representation in immigration court.¹³

What has been the federal response to address the influx?

The federal response to the humanitarian crisis has been disappointing as efforts to ramp up enforcement, detention, and expedited hearings have taken precedence. A number of policies and practices have been adopted that are contradictory to the laws designed to protect vulnerable populations entering the United States.

U.S. Immigration and Customs Enforcement Raids. On January 4, 2016, the Secretary of the U.S. Department of Homeland Security (DHS) released a statement renewing vigorous enforcement measures against newly arrived children and adults that have received final removal orders. The U.S. Immigration and Customs Enforcement lead targeted raids against 121 individuals who arrived in the United States after May 1, 2014, were issued final removal orders, and have no outstanding appeal.¹⁴ Legal service providers were able to request emergency stays of some of the deportations, but the raids have had a chilling ripple effect on immigrant families, as children are afraid to go to school or leave their homes in fear of deportation and families less willing to reach out for services. Heavy-handed enforcement policies do little to address the underlying issues and instead instill fear in communities that causes further trauma and despair.¹⁵

Family Detention. In response to the influx of families entering the United States from Central America, DHS expanded family detention facilities to hold women and children, often indefinitely. In 2014, detention centers opened in Artesia, NM; Karnes, TX; and Dilley, TX; with the capacity to hold thousands of individuals. Prior to 2014, the only facility that held families was a small 96-bed facility in Berks, PA.

Children experience severe psychological trauma in these settings, evidenced by widespread reports of inadequate food, lack of access to health services, degrading treatment of parents, and a lack of age appropriate activities necessary to promote the healthy development of a child.¹⁶ The Pennsylvania Department of Human Services announced on January 25, 2016, that the licensing of the Berks Family Detention Center would not be renewed. However, in Texas, the Department of Family and Protective Services has put forth proposals that would lower childcare licensing standards, which would allow the detention centers in Karnes and Dilley to remain open.

Rocket Dockets. Unaccompanied children are placed in removal proceedings upon entry in the United States. In order to address the volume of cases that have been coming in, the president's administration created "rocket dockets" to expedite the judicial process. However, speeding up these hearings causes serious due process violations. Often, children do not receive notice of the hearing in time to attend. Children are not guaranteed attorneys and volunteer legal providers may not be able to

be provided on such short notice to meet the child and prepare the case. Also, when a child is unrepresented or fails to appear in court, he or she is much more likely to be ordered removed. UNHCR has found that at least 58 percent of unaccompanied children are eligible for asylum in the United States.¹⁷ The expedited judicial process makes it difficult for any child to successfully gain asylum status even though many would qualify if they had proper notice and representation.

Non-compliance with Flores Settlement. The *Flores* Settlement, born out of a class action brought by the American Civil Liberties Union against the Immigration and Naturalization Service (INS), sets standards of how a minor in the custody of the INS should be treated.¹⁸ Several prominent civil rights groups filed a complaint against DHS in the summer of 2014 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. The Federal District Court of Central California ruled that the detention of children with their mothers violated the *Flores* Settlement and ordered the release of mothers and children and generally the holding of children in facilities not licensed for care of children.¹⁹ DHS has appealed the order to the Ninth Circuit.

Increased Border Enforcement. Through a coordinated effort, the United States, Mexico, and the Northern Triangle countries significantly ramped up interdiction and enforcement to apprehend migrant children and families en route to the United States. The United States increased the number of border agents along the U.S.-Mexico border, and Mexico launched a new “Southern Border Program” that created new interior checkpoints to disrupt common migration routes.²⁰ The Northern Triangle countries cooperated with increased deportation efforts by permitting additional deportation flights to their countries.²¹

Public Information Campaigns. The United States and the Northern Triangle countries launched a public information campaign in El Salvador, Guatemala, and Honduras to discourage migrants from making the journey to the United States, focusing on the dangers and consequences of making the journey, especially the dangers for children. The United States also attempted to refute the rumors that children and families would be granted permission to stay in the United States by reinforcing the message that all individuals arriving to the country would be removed, and that families would be placed into detention centers pending removal.²²

In-Country Processing. The president’s administration announced in January of 2016 that it would be increasing efforts to conduct in-country processing of refugees from Central America with the help of UNHCR. This process is intended to grant visas to individuals who would otherwise face a long and arduous journey to the United States. However, the program only allows 9,000 individuals to enter the country each year from El Salvador, Guatemala, and Honduras, a number that reflects only a small percentage of the children who given the numbers of children who have already fled the region.²³

Recommendations

The current influx of child migrants and families from Central America represents an international humanitarian situation, and solutions should focus on protecting vulnerable children and preserving their rights, as well as addressing the root causes for their forced migration. First Focus advocates for a comprehensive, inter-agency government response that prioritizes the best interest of the child at all stages of the immigration process. Following are some specific recommendations for the administration and Congress.

Administration

- All federal agencies that deal with unaccompanied children, including DHS, the Department of Justice (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.

- The administration should grant Temporary Protected Status or some other form of humanitarian relief to children and families fleeing from El Salvador, Guatemala, and Honduras. Temporary Protected Status is a designation due to conditions in a foreign country that temporarily prevent the country's nationals from returning safely, or where the country is unable to handle the return of its nationals adequately.
- ORR should ensure that children are placed into community-based care whenever possible, including placement with parent or relative sponsors. 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, academic, and other special needs of children, as well as pregnant and parenting teens, rather than placing children in large institutional settings.
- When releasing unaccompanied children to sponsors, ORR should ensure the safety of the child. To accomplish this, ORR should implement uniform background checks that include FBI fingerprinting and child abuse and neglect checks before the child is released to the sponsor.
- 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, well-being, and successful integration. Follow-up services should include home studies, medical and mental health services, legal services, assistance with enrolling in school, educational development, and supports for parents and other sponsors.
- The U.S. Department of Education (ED) should ensure implementation of *Plyler v. Doe*²⁴ by ensuring that migrant students are enrolled in schools efficiently without burdensome document requirements or long delays. In addition, ED should issue guidance to schools on adequately assessing students language and content placement, creating welcoming environments, and providing additional supports to meet their educational needs.
- DHS should close all family detention centers. Research consistently shows that family detention causes long-lasting trauma on children and is harmful to the parent-child relationship. Effective and cost-efficient alternatives to detention should be used whenever possible for families.
- DHS should cease from enforcement raids targeting Central American migrants. Raids, particularly those that target homes, further traumatize children and create a climate of fear among immigrant communities which can result in deterring immigrants from sending their children to school or accessing critical services.
- The Department of State, in partnership with over relevant governmental and nongovernmental agencies in the United States 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.

Congress

- 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 while in ORR care and post-release.
- Congress should strengthen screening and due process mechanisms for children apprehended by CBP. Child welfare experts should be contracted by CBP to screen children along the border so that children are properly evaluated for trafficking and other humanitarian concerns and connected to services.

- 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 *Fair Day in Court Act of 2016*, introduced on February 11, 2016, is legislation that would ensure that unaccompanied children have access to counsel.
- 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.

¹ 6 U.S.C. § 279(g)(2)(2012).

² Southwest Border Unaccompanied Children, U.S. Customs and Border Protection (February, 2016)

<http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

³ Rosenblum, Marc R. and Ball, Isabel. (2016). Trends in Unaccompanied Child and Family Migration from Central America. Washington, DC: Migration Policy Institute.

⁴ Preston, Julia. 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.

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

⁶ Id. pg. 7.

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

⁸ Id. pg. 4.

⁹ Suzanne Gamboa, *Too Many, Too Fast: Border Children Swamping Agent*, June 9, 2014. Available at: <http://www.nbcnews.com/news/latino/too-many-too-fast-border-children-swamping-agents-n126751>.

¹⁰ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, (P.L. 110-457)(2008).

¹¹ Cervantes, Wendy & Mathur, Richa. First Focus, “Legal Protections for Unaccompanied Minors In the Trafficking Victims Protection Act.” July 2014.

¹² <http://www.acf.hhs.gov/programs/orr/resource/children-entering-the-united-states-unaccompanied-section-3>.

¹³ Byrne, Olga & Miller, Elise. (2012). *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*. New York, New York: The Vera Institute for Justice.

¹⁴ Statement by Secretary Jeh C. Johnson on Southwest Border Security, January 4, 2016. Available at: <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>.

¹⁵ Anderson, Melinda D., *How Fears of Deportation Harm Kids’ Education*, The Atlantic, Jan. 26, 2016. Available at:

<http://www.theatlantic.com/education/archive/2016/01/the-educational-and-emotional-toll-of-deportation/426987/>.

¹⁶ Stop Detaining Families, National Immigrant Justice Center, Available at: <http://www.immigrantjustice.org/stop-detaining-families>.

¹⁷ *Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection*, UNHCR (2014).

¹⁸ The Flores Settlement Agreement, Case No. CV 85-4544-RJK(Px); Available at:

<http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749>.

¹⁹ *Flores v. Johnson*, Case No. CV CV 85-4544-RJK(Px)(Feb. 2, 2015).

²⁰ Rosenblum, Marc. (2015). *Unaccompanied Child Migration to the United States: The Tension Between Protection and Prevention*. Washington, DC: Migration Policy Institute.

²¹ Ibid.

²² Ibid.

²³ Julia Preston, David M. Herszenhorn, Michael D. Shear, *U.N. to Help U.S. Screen Central American Migrants*, Jan. 12, 2016. Available at:

http://www.nytimes.com/2016/01/13/us/politics/un-to-help-us-screen-central-american-migrants.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news&_r=0.

²⁴ *Phyller v. Doe*, 457 U.S. 202 (1982).