

Refugee Council USA

UNACCOMPANIED CHILDREN FLEEING TO THE UNITED STATES

WHO IS AN UNACCOMPANIED ALIEN CHILD?

Section 462 of the Homeland Security Act of 2002 defines an “unaccompanied alien child” (UC) as a child who has not reached the age of 18, has no lawful immigration status in the United States, and has no parent or legal guardian in the U.S. who is available to provide care and physical custody.

Since 2012, the number of children apprehended by the U.S. Border Patrol along the southwest border has increased significantly. In FY 2012, Border Patrol apprehended over 24,000 children along the southwest border. By FY 2014 that number had risen to 68,541. And in FY 2016, 59,692 children were apprehended by Border Patrol along the U.S.-Mexico border. This increase in arrivals is directly correlated to the rise in violence and persecution in children’s home countries. But the dangers these children face are not just in their communities and homes. Children are also highly vulnerable to trafficking and other forms of abuse while in their home countries, in transit to the United States, and following removal.

UNACCOMPANIED CHILDREN: DEMOGRAPHICS AND REASONS FOR FLEEING TO THE U.S

The majority of children arriving at the southwest border are from Mexico and Central America—in particular, El Salvador, Honduras, and Guatemala (the countries that make up the Northern Triangle of Central America (NTCA). Children range in age from infants to age 17, and are both boys and girls. Since 2012, the demographics of children seeking refuge from the NTCA has shifted to include more girls and younger children.

Children flee their home countries for complex reasons, including but not limited to violence by armed criminal actors, gender-based violence, abuse and targeting by gangs, domestic abuse, human trafficking, family reunification, and poverty. Since 2012, human rights, humanitarian, and faith organizations have documented a sharp increase in violence in the NTCA —detailing brutal and terrorizing acts against families and children - even toddlers. Children in this part of the world face rape, assault, torture, murder, extortion, and other threats of violence. Unfortunately, their governments are unable to protect them due to corrupt or inadequate law enforcement and legal systems, as well as limited social welfare and child protection infrastructure.

LEGAL FRAMEWORK FOR THE PROTECTION OF UNACCOMPANIED CHILDREN

The foundational legal framework governing the identification, custody, treatment, and removal of unaccompanied children is set forth in the Homeland Security Act of 2002, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the *Flores v. Reno* settlement agreement.

<p>The Homeland Security Act of 2002 transferred responsibility for the care and custody of unaccompanied children from the legacy Immigration and Naturalization Service to the Department of Health and Human Services’ Office of Refugee Resettlement (ORR). In addition, it requires that the best interest of the child be considered whenever a child is in the custody of the government.</p>	<p>The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires the Department of Homeland Security to transfer unaccompanied children from non-contiguous countries (e.g., NTCA) to ORR and screen children from contiguous countries for risk of trafficking and persecution before returning them home. It also sets processing, placement, representation, release, and removal procedures for children that differ in some aspects from those applied to migrant adults and that help to ensure that unaccompanied children are treated as children first.</p>	<p>The Flores Settlement of 1997 requires the U.S. government to comply with an array of legal due process rights for migrant children (including the right to a hearing and judicial review). It also establishes a mandatory policy favoring release of children to family members, and requires the United States to place children in the least restrictive setting. In addition, it sets minimum standards for licensed facilities housing children pending reunification. Many of these protections were later codified in the TVPRA</p>
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UNACCOMPANIED CHILDREN IN THE CUSTODY OF THE U.S GOVERNMENT

Unaccompanied children are generally apprehended by U.S. Customs and Border Protection (CBP) along the U.S.-Mexico border. By law, CBP must transfer children - with the exception of certain children from contiguous countries - to the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR) within 72 hours. ORR serves as the children's temporary custodian and makes decisions about whether a child can be safely released to a parent, family member, or other caregiver ("sponsor") while their immigration case moves through the court. Approximately 88% of children are released to sponsors in the U.S. for the duration of their immigration court proceedings.

In ORR care, children receive educational services, medical attention, screening, and a child protection assessment. These screenings are conducted by trained child welfare personnel and are incredibly important in identifying trafficking, trauma, abuse, and mental health concerns, as well as in gathering information on family history and protection needs without re-traumatizing a child.

ACCESS TO JUSTICE

Upon apprehension, children are placed into immigration removal proceedings where immigration judges decide whether to deny or grant them legal relief. As documented by UNHCR,¹ the majority of unaccompanied children have international protections concerns. Children are eligible to apply for asylum on one of five protected grounds: (1) race; (2) religion; (3) nationality; (4) membership in a particular social group and/or (5) political opinion. They may also be eligible for other forms of protection, including Special Immigrant Juvenile Status for children who have been abandoned, abused, or neglected, and visas for victims of trafficking (T visas) or other crimes (U visas).

U.S. law requires that the best interest of the child be considered whenever a child is in government custody. However, unaccompanied children have neither the right to government-funded counsel in their immigration case, nor an automatic referral to an attorney or child advocate charged with representing their best interest. As of November 2016, 50% of children are unrepresented. Children without attorneys are five times more likely to be removed to a country where their lives are in danger.² This lack of representation also increases the burden on immigration courts and contributes to backlogs in the court docket.

SAFE PLACEMENTS AND VETTING OF SPONSORS

Preference for family reunification is a core tenant of child welfare practice that extends to unaccompanied children. To ensure the safety of children, the TVPRA requires ORR to verify the identity and suitability of sponsors prior to reunifying a child. All sponsors must submit proof of identity and relationship to the child prior to release. ORR considers the suitability of sponsors to help ensure that children are not released to situations of trafficking, neglect, or abuse. For especially vulnerable children (disabled children; victims of trafficking, physical, or sexual abuse; and children whose proposed sponsor presents a risk of abuse or maltreatment) the TVPRA establishes minimum standards for safe release, requiring a home study and post-release social services to the family. ORR also requires these services for certain other vulnerable children it identifies (for example, ORR requires a home study for children who are 12 years and under before releasing to a non-relative sponsor). Home studies and post-release services ensure that sponsors are properly vetted and that a child is safe in their placement. Releasing children with services is also much less costly than keeping them in ORR care. For example, it costs ORR \$230 a day to keep a child in a shelter versus only \$14 a day in post-release.

In addition, vetting and release protocols require that all sponsors sign an agreement with ORR to ensure the child's appearance in immigration court. The Legal Orientation Program for Custodians (LOPC), funded by the Executive Office of Immigration Review (EOIR), ensures sponsors are made aware of and understand their obligation to take a child to court, and connects them with resources in their communities that can assist them with the legal proceedings.

¹See UNHCR, *Children on the Run*, March, 2014. Available At: <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html?query=children%20on%20the%20run>

² See Kids in Need of Defense, *Fact Sheet*, November 2016. Available at: <https://supportkind.org/wp-content/uploads/2016/11/General-KIND-Fact-Sheet-Oct-2016.pdf>

FUNDING CONSIDERATIONS

ORR lacks sufficient funding to meet the demands posed by increased arrivals of children. Additional funding is needed to ensure that the agency can provide adequate care for children and ensure safe release and placements of children with sponsors.

The dangers of inadequate funding for ORR were evident during the summer of 2014, when ORR could not open up bed space quickly enough to accommodate the number of children arriving. Children spent on average 7-14 days in CBP custody (in violation of the TVPRA), where conditions are inappropriate for their long-term care. In CBP facilities, children may not have space to sleep, bedding, clean clothes, access to showers, hot meals, or adequate medical care. ORR also faced significant pressure to reunify children quickly. In addition, the cost of providing emergency bed space and child care workers was considerable. Though it is generally both fiscally responsible and in the best interest of children to reunify them with their families, children should not be released to environments where their safety and well-being is at risk.

The uncertainty and fluctuation of unaccompanied children arrivals necessitates a long-term response plan that allows ORR not only sufficient funding but the flexibility to use those funds as needed.

RECOMMENDATIONS

A contingency fund is needed for ORR to ensure that the agency has the funds, flexibility, and adaptability to respond to fluctuating arrivals of unaccompanied children and provide all reunified children with basic post-release social services to assist with protection needs. No child, especially a child in need of protection, should go without adequate care and preventive services. We recommend that this fund be available to ORR for serving any of its populations of concern. Such a fund would guard against gaps in services during times of high arrivals and alleviate the need to reprogram money away from other vulnerable populations served by ORR.

Resistance is needed to efforts to roll back or narrow protections for unaccompanied children through administrative actions, changes to the TVPRA, or other legislative vehicles. The TVPRA establishes baseline protections to ensure the safety and best interests of vulnerable children. These protections should be expanded, not weakened.

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