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# Unaccompanied Alien Children: An Overview

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## Summary

The number of unaccompanied alien children (UAC, unaccompanied children) apprehended at the Southwest border between U.S. ports of entry while attempting to enter the United States without authorization has increased substantially over the past decade. Apprehensions numbered 8,041 in FY2008 and reached a then-record of 68,541 in FY2014. Since FY2014, apprehensions have fluctuated considerably, ranging from a low of 30,557 in FY2020 to a high of 149,093 in FY2022. Since FY2021, they have exceeded 130,000 each year. In the first 10 months of FY2024, apprehensions of UAC numbered 87,475.

UAC are children under age 18 who lack both lawful immigration status in the United States, and a parent or legal guardian in the United States, or a parent or legal guardian in the United States who is available to provide care and physical custody. U.S. policy on UAC treatment and processing is guided by the *Flores Settlement Agreement* of 1997, the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

Children from the *Northern Triangle* countries—El Salvador, Guatemala, and Honduras—and increasingly from other countries dominate what was previously an almost entirely Mexican migrant flow. The TVPRA permits most Mexican children to be *voluntarily* returned to Mexico. In contrast, children from all other countries may enter the United States and are placed in formal removal immigration proceedings, during which they may apply for relief or protection from removal. Consequently, the shift in origin-country composition has affected both federal spending and the federal agencies responsible for unaccompanied children.

The Department of Homeland Security (DHS), Department of Health and Human Services (HHS), and Department of Justice (DOJ) share responsibility for UAC processing, treatment, placement, and immigration case adjudication. DHS's Customs and Border Protection (CBP) apprehends and detains UAC arrested at the border. DHS's Immigration and Customs Enforcement (ICE) handles custody transfer and repatriation, apprehends UAC in the U.S. interior, and represents the government in removal proceedings. HHS's Office of Refugee Resettlement (ORR) coordinates care and placement of UAC in appropriate custodial settings. DOJ's Executive Office for Immigration Review (EOIR) adjudicates UAC removal cases.

The Obama, Trump, and Biden Administrations, as well as Congress, have taken steps since 2014 to respond to the general increase in UAC apprehensions. During the 2014 surge, the Obama Administration opened the first large temporary shelters, initiated programs to address root causes of child migration, and created the Central American Minors (CAM) Refugee and Parole Program. The Trump Administration instituted policies to reduce illegal migrant flows and limit who could apply for asylum. It discontinued the CAM program and implemented an agreement between ORR and DHS to share biometric and immigration status information about children as well as sponsors and any adults in their households. In 2020, HHS's Centers for Disease Control and Prevention (CDC) exercised its authority under *U.S. Code* Title 42 (public health) that temporarily allowed CBP to promptly expel UAC at the border.

The Biden Administration has faced record high UAC apprehension levels. It has excepted unaccompanied children from Title 42 expulsions, revoked the ORR-DHS information-sharing agreement, employed numerous temporary influx facilities, and reactivated the CAM program. It also issued a final rule implementing the *Flores Agreement* and formalizing UAC policies in regulation.

Congress has responded by providing funding for UAC-related activities in response to annual, supplemental, and emergency appropriations requests. Current UAC policy issues facing Congress include the provision of post-release follow-up and services, the prevalence of child

labor violations, legal representation for children in immigration proceedings, and potential incentives for child migration created by the TVPRA.

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## Introduction

Unaccompanied alien<sup>1</sup> children (UAC, unaccompanied children) are statutorily defined as children

- lacking lawful immigration status in the United States,<sup>2</sup>
- under age 18, and
- without either a parent or legal guardian in the United States, or a parent or legal guardian in the United States who is available to provide care and physical custody.<sup>3</sup>

Most unaccompanied children are apprehended between U.S. ports of entry along the southwestern border with Mexico. Apprehensions are made by the U.S. Border Patrol (USBP), an agency within the Department of Homeland Security's (DHS's), Customs and Border Protection (CBP). Less frequently, unaccompanied children are deemed inadmissible at U.S. ports of entry along the border by CBP's Office of Field Operations or apprehended in the interior of the country by DHS's Immigration and Customs Enforcement (ICE).<sup>4</sup>

During the 2000s, the number of apprehended unaccompanied children who were subsequently put into removal proceedings and referred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) averaged 6,700 annually and ranged from a low of about 4,800 in FY2003 to a peak of about 8,200 in FY2007.<sup>5</sup>

UAC apprehensions at the Southwest border increased significantly in FY2009. By FY2014, they reached a then-record of 68,541, prompting some Members of Congress as well as the Obama Administration to characterize this migrant flow as a humanitarian crisis.<sup>6</sup> UAC apprehensions have since remained relatively high and fluctuated considerably (see the "UAC Apprehension Levels" section).<sup>7</sup>

<sup>1</sup> The term *alien* is defined in the Immigration and Nationality Act of 1952, as amended (INA), INA §101(a)(3), 8 U.S.C. §1101(a)(3) and refers to people who are not U.S. citizens or U.S. nationals. Aliens include foreign nationals who are legally present as well as those not legally present.

<sup>2</sup> The lack of lawful immigration status results from entering the country "without inspection" (illegally), entering legally with fraudulent documents, or entering the country legally but overstaying the duration of admittance (i.e., a visa overstay). For more information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

<sup>3</sup> 6 U.S.C. §279(g)(2). Although these children may have a parent or legal guardian who resides in the United States, they are classified as unaccompanied if the parent or legal guardian cannot provide *immediate* care. A child accompanied by any adult who is not a parent or a designated legal guardian, including other family members such as older siblings or aunts and uncles, are also classified as unaccompanied.

<sup>4</sup> In this report, figures presented for UAC apprehensions (between U.S. ports of entry) do not include figures for UAC who are deemed inadmissible (at U.S. ports of entry). The latter constitute a relatively small portion of all UAC processed at the U.S. border. Publicly available figures for the past three fiscal years of inadmissible UAC are presented in the "UAC Apprehension Levels" section.

<sup>5</sup> U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement, *Office of Refugee Resettlement Year in Review—FY2013*, December 20, 2013; and HHS, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committees*, p. 38.

<sup>6</sup> U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Department of Homeland Security*, hearing, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 11, 2014 (hereinafter, *Oversight of the Department of Homeland Security*, June 11, 2014).

<sup>7</sup> CBP does not publish UAC apprehension data for individual years prior to FY2008. In FY2001, UAC apprehensions numbered 5,385 and UAC referrals from CBP to ORR averaged about 7,100 for the years FY2004-FY2012. See archived CRS Report RL33896, *Unaccompanied Alien Children: Policies and Issues* (available to congressional clients upon request); and HHS, Administration for Children and Families, *Fiscal Year 2017, Justification of Estimates for Appropriations Committees*, p. 243.

Unaccompanied minors' motivations to migrate to the United States are often multi-faceted and challenging to measure.<sup>8</sup> During the 2014 peak, the Congressional Research Service (CRS) analyzed *push* factors contributing to UAC out-migration.<sup>9</sup> They included crime, economic conditions, poverty, and the presence of violent transnational gangs in migrants' countries of origin. CRS also examined *pull* factors attracting UAC to the United States, such as economic opportunity, family reunification, and more favorable treatment of non-Mexican migrant children by U.S. immigration law.<sup>10</sup> These push and pull factors still apply currently.

During the 2014 surge, critics of the Obama Administration's policy response suggested that the sizeable increase in UAC flows resulted from U.S. immigration policy.<sup>11</sup> They repeatedly cited the 2008 statute<sup>12</sup> that places UAC from countries other than Mexico and Canada into formal removal proceedings, thereby allowing the children to enter and remain in the United States while awaiting a hearing before an immigration judge (see the "Legal Foundation of Current Policy" section). Similar assessments have been leveled in response to the recent high level of UAC apprehensions during the Biden Administration.<sup>13</sup>

More recent analyses of unaccompanied child migration to the United States cite causes similar to those attributed to the 2014 peak, including lack of employment opportunity and employment instability;<sup>14</sup> socioeconomic and security conditions;<sup>15</sup> corruption and weak governance;<sup>16</sup> and climate change, natural disasters, and ensuing food insecurity.<sup>17</sup> Others argue that the Biden Administration's more lenient immigration enforcement policies relative to those of the Trump Administration<sup>18</sup> have encouraged all migrants, and particularly unaccompanied children, to seek asylum in the United States (see the "Biden Administration" section).

<sup>8</sup> See, for example, Matthew Lorenzen, "The Mixed Motives of Unaccompanied Child Migrants from Central America's Northern Triangle," *Journal on Migration and Human Security*, vol. 5 (2018), pp. 744-767.

<sup>9</sup> See archived CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*. For information linking transnational gangs and UAC, see CRS Report R45292, *MS-13 in the United States and Federal Law Enforcement Efforts*; and Jessica Vaughan, "MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets," Center for Immigration Studies, February 21, 2018.

<sup>10</sup> For a more recent analysis, see United Nations High Commission for Refugees, *Families on the Run*, 2020.

<sup>11</sup> Critics cited the Deferred Action for Childhood Arrivals (DACA) policy, begun under the Obama Administration in 2012, which grants certain foreign nationals some protection from removal in two-year increments if they arrived in the United States as children and meet other requirements. See, for example, *Oversight of the Department of Homeland Security, June 11, 2014*. For background information on the DACA policy, see archived CRS Report R44764, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

<sup>12</sup> The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457).

<sup>13</sup> See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Integrity, Security, and Enforcement, *The Biden Border Crisis: Exploitation of Unaccompanied Alien Children*, Statement of Jessica M. Vaughan, Center for Immigration Studies, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., April 26, 2023; and Lora Ries, "The Left's Immigration Policies Are Endangering Children," The Heritage Foundation, March 22, 2021.

<sup>14</sup> Catholic Relief Services, *Between Rootedness and the Decision to Migrate*, October 2020.

<sup>15</sup> See CRS In Focus IF11151, *Central American Migration: Root Causes and U.S. Policy*.

<sup>16</sup> See, for example, Charles T. Call, "The imperative to address the root causes of migration from Central America," Brookings Institution, January 29, 2021.

<sup>17</sup> See, for example, Andrew Linke et al., "Dry growing seasons predicted Central American migration to the US from 2012 to 2018," *Scientific Reports*, vol. 13 (2023); Natalie Kitroeff and Daniele Volpe, "'We Are Doomed': Devastation From Storms Fuels Migration in Honduras," *New York Times*, June 7, 2021; Kevin Sieff, "The reason many Guatemalans are coming to the border? A profound hunger crisis," *Washington Post*, April 1, 2021; Jeff Masters, "Fifth Straight Year of Central American Drought Helping Drive Migration," *Scientific American*, December 23, 2019; and World Bank Group, "Internal Climate Migration in Latin America," Groundswell Policy Note #3, 2018.

<sup>18</sup> See, for example, DHS, "Unaccompanied Alien Children and Family Units Are Flooding the Border Because of Catch and Release Loopholes," press release, February 15, 2018 (issued during the Trump Administration).

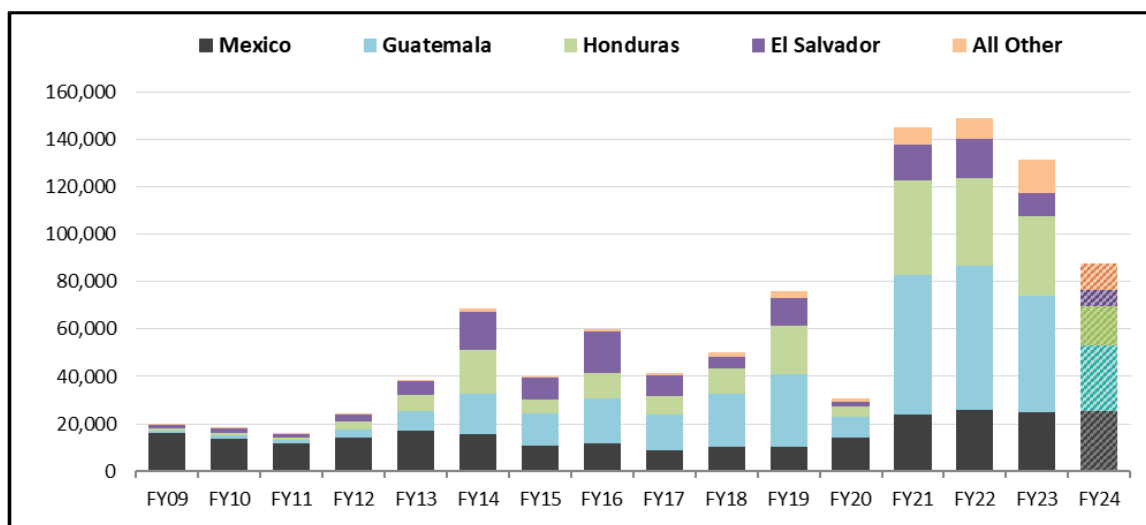
Recent investigative reporting on the prevalence of child labor among unaccompanied children in the United States has highlighted the importance of remittances for motivating the migration of many unaccompanied children. Linked to that issue are the provision of post-release services; legal representation; and at a broader level, unanticipated incentives created by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

This report reviews UAC apprehension levels since the TVPRA was enacted. It discusses statutes and policies governing treatment, care, and custody of unaccompanied children as well as the responsibilities of the primary federal agencies involved. It then reviews administrative and congressional actions to address UAC surges from FY2014 to the present, and concludes with a discussion of selected key policy considerations.<sup>19</sup>

## UAC Apprehension Levels

Relatively high levels of UAC apprehensions received considerable public and congressional attention a decade ago. After having remained relatively stable during the 2000s, apprehensions roughly doubled in 2009, remained stable through FY2011, and then climbed each year to reach a then-record of 68,541 in FY2014 (**Figure 1**). Since FY2014, UAC apprehensions have fluctuated considerably every year but at a consistently and substantially higher level than in previous years.

**Figure 1. UAC Apprehensions at the Southwest Border, by Country of Origin**  
FY2009-FY2024\*



**Sources:** FY2009-FY2013: United States Border Patrol, "Juvenile and Adult Apprehensions—Fiscal Year 2013." FY2014-FY2018: Customs and Border Protection, "U.S. Border Patrol Southwest Border Apprehensions by Sector FY2018." FY2019-FY2024: U.S. Border Patrol, "Southwest Land Border Encounters," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

**Notes:** \*FY2024 includes the first 10 months of the fiscal year, through July 2024. **Figure 1** excludes UC deemed inadmissible at U.S. ports of entry because CBP did not include them in their reported statistics prior to FY2017. Data for FY2020 and FY2021 represent encounters that include both apprehensions under Title 8 as well as expulsions under Title 42. **Figure 1** begins with FY2009, the first year when the TVPRA was fully enacted.

<sup>19</sup> For additional background information on legal aspects of UAC, see CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*.



In 2020, at the outset of the COVID-19 pandemic, the Trump Administration restricted the entry of certain foreign nationals at land and coastal borders to limit the potential spread of the virus. The Centers for Disease Control and Prevention (CDC) issued an order referred to as *Title 42* (from the *U.S. Code* section for public health) in March 2020 that suspended the introduction of certain foreign nationals traveling from Mexico and Canada into the United States.<sup>20</sup> Under Title 42, CBP expelled most unaccompanied children promptly to Mexico, their country of last transit, instead of processing them under immigration law (*Title 8*).

The use of Title 42 sharply reduced the number of unaccompanied children that CBP referred to ORR. In the first six months of FY2020, UAC apprehensions by CBP and CBP referrals to ORR totaled 18,096 and 13,339, respectively.<sup>21</sup> During the enforcement of the Title 42 order, those figures for the second half of FY2020 declined to 12,461, and 1,970, respectively.<sup>22</sup> The declines occurred because UAC expulsions under Title 42 made up the large majority of enforcement actions, and expulsions preclude referrals to ORR.<sup>23</sup>

In November 2020, a federal district court judge halted the application of the Title 42 order to unaccompanied children because it violated the TVPRA and other laws governing UAC processing (see the “Legal Foundation of Current Policy” section).<sup>24</sup> In January 2021, a federal circuit court judge stayed the November injunction,<sup>25</sup> which would have allowed the Biden Administration to continue expelling unaccompanied children under Title 42. In February 2021, the Administration formally exempted unaccompanied children from Title 42 expulsions, requiring that they be processed under Title 8 and put into formal immigration proceedings.<sup>26</sup>

In FY2021, UAC *encounters* (apprehensions under Title 8 as well as expulsions under Title 42) rebounded to a new record of 144,834, representing 9% of the then-record 1,659,206 U.S. Border Patrol encounters at the Southwest border.<sup>27</sup> This elevated level of UAC encounters has continued

<sup>20</sup> HHS, Centers for Disease Control and Prevention, “Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,” 85 *Federal Register* 16559, March 24, 2020; and “Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 *Federal Register* 17,060, March 26, 2020.

<sup>21</sup> Source for apprehensions figure: U.S. Border Patrol, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. Source for referrals figure: HHS, “Latest UC Data – FY2020,” <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2020/index.html>. HHS presents only 30-day average referrals, which CRS multiplied by the number of days in each month and then summed these products to produce the total.

<sup>22</sup> *Ibid.*

<sup>23</sup> As a result of Title 42 and the COVID-19 pandemic, relatively fewer children from Northern Triangle countries migrated to the Southwest border in the second half of FY2020 compared to the first half. Consequently, Mexican unaccompanied children made up 35% of all UAC apprehensions in the first half of FY2020 but 64% in the second half. Since most Mexican UAC were not referred to ORR but were voluntarily returned as a result of Title 42, ORR referrals declined more significantly (85%) than apprehensions (32%) in the second half of FY2020.

<sup>24</sup> Suzanne Monyak, “DC Judge Blocks Policy To Expel Migrant Kids From Border,” *Law360*, November 18, 2020.

<sup>25</sup> Alyssa Aquino, “DC Circ. Lifts Block On Migrant Children Expulsion Policy,” *Law360*, January 29, 2021.

<sup>26</sup> HHS, CDC, “Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination,” 86 *Federal Register* 9942, February 17, 2021. CDC reaffirmed that exemption in July. See CDC, “Title 42 Order Reassessment and Exception for Unaccompanied Noncitizen Children,” media statement, July 16, 2021. CDC formally rescinded Title 42 with respect to unaccompanied children in March 2022. See CDC, “Title 42 Termination with Respect to Unaccompanied Noncitizen Children,” March 12, 2022.

<sup>27</sup> In FY2020 and FY2021, CBP recorded 175,391 combined UAC encounters: 127,164 (89%) Title 8 apprehensions and 15,585 (11%) Title 42 expulsions. Most of the expulsions (10,939 or 70%) occurred during FY2020, and in both fiscal years, children from Mexico (11,506) accounted for almost three-fourths (74%) of all child expulsions. CBP, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

through FY2022 (149,093) and FY2023 (131,519). In the first 10 months of FY2024, UAC encounters numbered 87,475.<sup>28</sup>

As noted above, figures presented for UAC apprehensions (between U.S. ports of entry) exclude UAC deemed inadmissible or expelled at U.S. ports of entry. Those UAC encounters numbered 2,964 in FY2022; 5,756 in FY2023; and 8,879 in the first 10 months of FY2024 (9% of total UAC encounters in this year).<sup>29</sup>

In addition to large increases in the number of UACs apprehended at the Southwest border, the origin countries of UAC have become increasingly diverse. In FY2009, for example, Mexican and Northern Triangle children represented 82% and 17%, respectively, of that year's 19,668 UAC apprehensions. By FY2023, those proportions had flipped, with Mexican and Northern Triangle children representing 19% and 69%, respectively, of all UAC apprehensions. Over this same period, the percentage of children from all other countries increased from 1% to 14%. The latter percentage includes children primarily from Ecuador, Nicaragua, Peru, and Venezuela, as well as fewer children from Asian, European, and African countries, and reflects the increasing geographic dispersion of the total migrant flow to the Southwest border.<sup>30</sup> This country-of-origin shift has affected federal agencies that process and shelter unaccompanied children because of the different responses to children from contiguous countries (Mexico and Canada) versus children from all other countries (see "Processing and Care of Apprehended UAC" below).<sup>31</sup>

Most UAC apprehensions in the first 10 months of FY2024 occurred within the Tucson (AZ), Rio Grande (TX), and Del Rio (TX) Border Patrol sectors (31%, 24%, and 16%, respectively).<sup>32</sup> Data on UAC in ORR care during the first 10 months of FY2024 indicate that the female UAC proportion was 38% and the proportion of UAC under age 15 was 28%.<sup>33</sup>

## Legal Foundation of Current Policy

A court settlement and two laws described below most directly guide U.S. policy on the treatment and administrative processing of UAC: the *Flores Settlement Agreement* of 1997, the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act of 2008.

During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS)<sup>34</sup> led to a series of lawsuits against the U.S. government that eventually resulted in a 1997 consent decree, the *Flores Settlement Agreement* (*Flores Agreement*).<sup>35</sup> The *Flores Agreement* established a nationwide policy for the detention, treatment,

<sup>28</sup> As a basis for comparison, prorating this figure to 12 months yields an estimated annual figure of 112,788.

<sup>29</sup> Prior to FY2017, CBP did not publish statistics on UAC deemed inadmissible, making it difficult to compare apprehensions before and after that fiscal year. CBP, "Southwest Land Border Encounters," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

<sup>30</sup> See, for example, Colleen Putzel-Kavanaugh and Ariel G. Ruiz Soto, "Shifting Patterns and Policies Reshape Migration to U.S.-Mexico Border in Major Ways in 2023," Migration Policy Institute, October 2023.

<sup>31</sup> For one example of how high UAC apprehension levels have affected federal agencies, see Letter from Kirstjen M. Nielsen, Secretary of Homeland Security, to United States Senate and U.S. House of Representatives, March 29, 2019.

<sup>32</sup> CBP, "Southwest Land Border Encounters (By Component)," <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component>.

<sup>33</sup> HHS, "Latest UAC Data—FY2024," August 28, 2024, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2024/index.html>.

<sup>34</sup> The Homeland Security Act of 2002 dissolved the former Immigration and Naturalization Service (INS) and assigned its functions to the Departments of Homeland Security, Justice, and Health and Human Services.

<sup>35</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997). Many terms of the agreement have been codified at 8 C.F.R. §236.3, §1236.3.

and release of UAC and recognized the particular vulnerability of UAC as minors while detained without a parent or legal guardian.<sup>36</sup> It requires 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 subsequently, concerns continued over whether the INS had fully implemented the policies and procedures it developed in response to the *Flores Agreement*.<sup>37</sup>

Five years later, the Homeland Security Act of 2002 (HSA, P.L. 107-296) divided responsibilities for the processing and treatment of UAC between the newly created DHS and ORR. To DHS, the law assigned responsibility for the apprehension, transfer, and repatriation of UAC. To ORR, the law assigned responsibility for coordinating and implementing the care and placement of UAC in appropriate custody, reunifying UAC with their parents abroad if appropriate, maintaining and publishing a list of legal services available to UAC, and collecting statistical information on UAC, among other responsibilities.<sup>38</sup> The HSA also established the statutory definition of UAC as unauthorized minors not accompanied by a parent or legal guardian.<sup>39</sup>

Despite these developments, some advocates continued to argue that child protections in the *Flores Agreement* had still not been fully implemented.<sup>40</sup> Responding to ongoing concerns that CBP was not adequately screening apprehended UAC for evidence of human trafficking or persecution, 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 who are removed are safely repatriated to their countries of nationality or of last habitual residence.

The TVPRA set forth special rules for UAC from contiguous countries (i.e., Mexico and Canada), requiring that they be screened for evidence of human trafficking within 48 hours of apprehension. It mandated that unaccompanied children determined not to be human trafficking victims or not to have a fear of returning to their home country or country of last habitual residence be returned to their countries without additional penalties. It also required the Secretary of State to negotiate agreements with Mexico and Canada to manage UAC repatriation.

The TVPRA mandated that unaccompanied children from noncontiguous countries—as well as UAC from contiguous countries apprehended at the border and determined to be human trafficking victims or to have a fear of returning to their home country or country of last habitual residence, or who are apprehended away from the border—be transferred to the care and custody of ORR and placed in standard removal proceedings.

<sup>36</sup> See DHS, Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

<sup>37</sup> See DOJ, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Executive Summary, Report no. I-2001-009, September 28, 2001. For more information on the *Flores Agreement*, see CRS In Focus IF11799, *Child Migrants at the Border: The Flores Settlement Agreement and Other Legal Developments*.

<sup>38</sup> ORR assumed care of UAC on March 1, 2003. HSA, P.L. 107-296, Section 462.

<sup>39</sup> 6 U.S.C. §279(g)(2).

<sup>40</sup> See, for example, DOJ, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Report no. I-2001-009, executive summary, September 28, 2001.

## Processing and Care of Apprehended UAC

The following sections describe the roles of the various federal agencies involved in the processing and care of unaccompanied children. To summarize, several DHS agencies handle the apprehension, processing, and repatriation of UAC. CBP apprehends, processes, and temporarily holds UAC along U.S. borders. DHS's ICE physically transports UAC referred to ORR from CBP to ORR custody. ICE also repatriates UAC who are ordered removed from the United States. ORR is responsible for sheltering UAC while they await an immigration hearing. DHS's U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC after the children have been placed in removal proceedings. DOJ's Executive Office for Immigration Review (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.

### Customs and Border Protection

The USBP and OFO apprehend and process unaccompanied children that arrive between or at, respectively, U.S. ports of entry.<sup>41</sup> Most UAC are apprehended between ports of entry and are transported to USBP facilities. Those arriving at ports of entry are escorted by OFO to CBP secondary screening areas.

When CBP confirms that a foreign national under age 18 lacks U.S. lawful immigration status and is unaccompanied by a parent or legal guardian, the minor is classified as an unaccompanied alien child under the Immigration and Nationality Act (INA, Title 8 of the *U.S. Code*) and processed for immigration violations.<sup>42</sup> The consulate representing the child's country of citizenship is notified that DHS has detained the child. CBP also collects and enters identifying information about the UAC into DHS databases.<sup>43</sup> With the exception of Mexican and Canadian children who meet the three criteria discussed below, the TVPRA requires that USBP turn unaccompanied children over to ICE for transport to ORR within 72 hours of determining that they meet the UAC definition.

As noted, the TVPRA directed 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 repatriated safely to their country of nationality or last habitual residence. Of particular significance, the TVPRA requires CBP to follow certain criteria for UAC who are nationals or habitual residents of a contiguous country.<sup>44</sup> Although the screening provision only applies to UAC from contiguous countries, DHS issued a policy in March 2009 that effectively mandated screening for all UAC.<sup>45</sup>

<sup>41</sup> USBP oversees immigration and customs enforcement *between* ports of entry. OFO oversees the inspection of travelers and goods *at* ports of entry. All UAC are processed, regardless of where they enter, but only UAC that arrive between U.S. ports of entry are apprehended.

<sup>42</sup> For information on how CBP screens unaccompanied children, see U.S. Border Patrol, Enforcement Systems Division, *UAC Screening Guide / CBP Form 93 (Revised)*, March 4, 2019; and DHS, Office of Inspector General, *Age Determination Practices for Unaccompanied Alien Children* – Update, OIG-10-122, September 2010.

<sup>43</sup> UAC processing includes gathering *biographic* data such as name, age, citizenship, and accompanied or unaccompanied status. USBP agents also collect *biometric* data on UAC (e.g., fingerprints) and query relevant immigration, terrorist, and criminal databases.

<sup>44</sup> 8 U.S.C. §1232(a)(2).

<sup>45</sup> Testimony of Office of Immigration and Border Security Acting Deputy Assistant Secretary Kelly Ryan, U.S. (continued...)

The TVPRA requires that CBP personnel screen unaccompanied children from contiguous countries within 48 hours of apprehension to determine if the following are true:

- the child 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 of being trafficked upon return to his/her country of nationality or last habitual residence;
- the child does not have a fear of returning to his/her country of nationality or last habitual residence owing to a credible fear of persecution; and
- the child is able to decide independently to return voluntarily to his/her country of nationality or last habitual residence.<sup>46</sup>

If CBP determines that all three of the above statements are true about a UAC from a contiguous country, and that the child is inadmissible under the INA,<sup>47</sup> the UAC must return to his or her home country. In such cases, CBP can permit the child to withdraw his/her application for admission,<sup>48</sup> allowing the minor to return voluntarily to his or her country of nationality or last habitual residence.

The TVPRA contains provisions for the treatment of UAC from contiguous countries while in the care and custody of CBP, and it provides guidance for CBP personnel on repatriating minors. It requires the Secretary of State to negotiate agreements with Mexico and Canada for repatriation of their UAC that serve to protect the children from trafficking. These agreements, at minimum, must include provisions that (1) ensure the handoff of the minor children to an appropriate government official; (2) prohibit returning UAC outside of “reasonable business hours”; and (3) require border personnel of the contiguous countries be trained in the terms of the agreements.

Unaccompanied children from contiguous countries for whom at least one of the above three statements are not true, unaccompanied children for whom no determination can be made within 48 hours of apprehension, or unaccompanied children from noncontiguous countries who are not subject to TVPRA’s special repatriation procedures for UAC from Mexico or Canada (i.e., withdrawal of application for admission), are placed in standard removal proceedings.<sup>49</sup> The TVPRA specifies that in standard removal proceedings, UAC are eligible to depart the United States voluntarily at no cost to the child.<sup>50</sup>

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Congress, Senate Committee on the Judiciary, *Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2011.

<sup>46</sup> P.L. 110-457, Title II, §235(a)(2)(A). Some observers allege that USBP agents routinely screen apprehended Mexican unaccompanied children inadequately in order to summarily return most of them to Mexico. See, for example, Kiera Coulter et al., “A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection,” *Journal on Migration and Human Security*, vol. 8 (2020), pp. 96-110; Government Accountability Office (GAO), *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521, July 2015; and Betsy Cavendish and Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed, Washington, DC, 2011 (hereinafter, *Children at the Border*). In contrast, OFO agents at U.S. ports of entry in FY2020 reportedly referred half of all presenting unaccompanied children to ORR. See Amnesty International, “Facts and figures: Deportations of unaccompanied migrant children by the USA and Mexico,” June 11, 2021.

<sup>47</sup> Before admitting a foreign national to enter the United States, CBP must confirm or establish the individual’s admissibility according to the grounds for inadmissibility in INA §212(a), 8 U.S.C. §1182(a).

<sup>48</sup> Under INA §235(a)(4), apprehension at the border constitutes an application for admission to the United States. In this case, “withdrawal of application for admission” permits the UAC to return immediately to Mexico or Canada and avoid administrative or other penalties.

<sup>49</sup> 8 U.S.C. §1232(a) and INA §240, 8 U.S.C. §1229a.

<sup>50</sup> INA §240B, 8 U.S.C. §1229c. For more information on voluntary departure, voluntary return, and withdrawal of application for admission, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.



As noted, UAC apprehended at ports of entry are processed by OFO at CBP secondary screening areas, and UAC apprehended between ports of entry are processed at USBP facilities. A January 2008 CBP memorandum entitled “Hold Rooms and Short Term Custody” established policies for the temporary custody of persons detained in hold rooms.<sup>51</sup> In 2010, the DHS Office of Inspector General (OIG) issued a report concluding that while CBP was in general compliance with the *Flores Agreement*, it needed to improve its handling of UAC.<sup>52</sup> In 2015, CBP issued standards to address the interaction of its personnel with detained individuals.<sup>53</sup> Yet, NGOs continued to criticize CBP for its treatment of UAC and other detainees.<sup>54</sup> In 2018, a multi-disciplinary team from DHS’s OIG conducted unannounced site inspections at nine CBP facilities within the El Paso and Rio Grande Valley border sectors in Texas. The OIG reported that the CBP facilities appeared to be operating in compliance with the 2015 standards.<sup>55</sup>

In 2017, the judge overseeing the *Flores Agreement* appointed the CBP Chief Accountability Officer as the CBP Juvenile Coordinator (JC) to oversee the agency’s compliance with the agreement.<sup>56</sup> In 2019, CBP created the Juvenile Coordinator’s Office (JCO) to assist with this responsibility. The JC and JCO reportedly conduct announced and unannounced site visits to assess CBP facilities and interview children and/or parents regarding their temporary CBP custody experiences.<sup>57</sup>

During the early months of 2021, CBP processing facilities that temporarily housed unaccompanied minors were filled far beyond capacity following record levels of monthly UAC apprehensions.<sup>58</sup> The crowded conditions resulted from a processing backup created by reduced ORR capacity to accept the children from CBP into its shelter network. That capacity shortfall, in turn, resulted from some shelters having closed in response to declining demand during the COVID-19 pandemic. Some ORR shelters also reduced capacity in order to adhere to CDC social distancing guidelines.<sup>59</sup> ORR has since expanded its housing capacity (see “Increasing UAC Shelter Capacity” below).

<sup>51</sup> UAC are held in “hold rooms” at Border Patrol stations. The 2008 memorandum, which is publicly available but with portions redacted, outlines agency policy on the care and treatment of individuals in CBP care and custody. See CBP, “Hold Rooms and Short Term Custody,” January 31, 2008.

<sup>52</sup> DHS, Office of Inspector General, *CBP’s Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010. The OIG report did not address whether CBP was complying with the TVPRA and was unable to determine whether CBP personnel had sufficient training to comply with the provisions in the *Flores Agreement*.

<sup>53</sup> CBP, *National Standards on Transport, Escort, Detention, and Search*, October 2015.

<sup>54</sup> See Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, February 2018; and the University of Chicago Law School, International Human Rights Clinic, the American Civil Liberties Union (ACLU) Border Litigation Project, and ACLU Border Rights, *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection*, May 2018.

<sup>55</sup> DHS, Office of Inspector General, *Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*, OIG-18-87, September 28, 2018.

<sup>56</sup> U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, hearing, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., June 10, 2021, transcript serial no. 117-16, p. 20.

<sup>57</sup> Testimony of Benjamin “Carry” Huffman, CBP Executive Assistant Commissioner, Enterprise Services, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., June 10, 2021.

<sup>58</sup> See, for example, Rosa Flores and Sara Weisfeldt, “Border facilities holding migrant children are ‘stretched beyond thin’ with ‘profound overcrowding,’ court monitors say,” *CNN*, April 5, 2021.

<sup>59</sup> See, for example, Mark Greenberg, “Hampered by the Pandemic: Unaccompanied Child Arrivals Increase as Earlier Preparedness Shortfalls Limit the Response,” Migration Policy Institute, March 2021.

## Immigration and Customs Enforcement

ICE is responsible for physically transferring unaccompanied children from CBP to ORR custody, and apprehending them in the U.S. interior during immigration enforcement actions. In addition, ICE attorneys represent the government in removal proceedings before EOIR.

ICE is also responsible for the physical removal of all foreign nationals, including UAC, who have final orders of removal or who have elected to depart voluntarily from the United States while in removal proceedings.<sup>60</sup> As part of this process, ICE must issue a Notice to Appear (NTA) to the unaccompanied child following ORR's placement of the child with a sponsor.<sup>61</sup> ICE notifies the country of the foreign national being removed from the United States.<sup>62</sup> To safeguard the welfare of all unaccompanied children, ICE has established policies for their repatriation, including

- returning them only during daylight hours;
- recording transfers by ensuring that receiving government officials or designees sign for custody;
- returning them through a port designated for repatriation;
- providing them the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.<sup>63</sup>

To implement a removal order for a UAC, however, the U.S. government must secure travel documents from his or her country of nationality. As such, the United States depends on the willingness of foreign governments to provide these documents and accept the return of their nationals. Each country has documentary requirements for repatriation of their nationals.<sup>64</sup> While some allow ICE to use a valid passport to remove a foreign national (if the foreign national possesses one), others require ICE to obtain a specific repatriation document.<sup>65</sup> Obtaining travel documents can become problematic, because countries may change their documentary requirements or object to a foreign national's return.<sup>66</sup>

Once the foreign country has issued travel documents, ICE arranges the UAC's transport. If the return involves plane travel, ICE personnel accompany the UAC to his or her home country. ICE uses commercial airlines for most UAC removals. ICE provides two escort officers for each

<sup>60</sup> For more information on Voluntary Departure, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

<sup>61</sup> ICE has faced challenges complying with this requirement. For more information, see DHS, Office of Inspector General, "Management Alert - ICE Cannot Monitor All Unaccompanied Migrant Children Released from DHS and U.S. Department of Health and Human Services' Custody," OIG-24-46, August 19, 2024; and Andrew R. Arthur, "DHS Watchdog Slams ICE Handling of Alien Children," Center for Immigration Studies, August 22, 2024.

<sup>62</sup> ICE uses a country clearance to notify a foreign country, through a U.S. Embassy abroad, that a foreign national is being repatriated. In addition, when ICE personnel escort the alien during the repatriation, the country clearance process notifies the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

<sup>63</sup> ICE Congressional Relations, email correspondence, May 16, 2014, and confirmed by CRS, August 6, 2019.

<sup>64</sup> Depending on the country and where the UAC is housed, consular officer from that country 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.

<sup>65</sup> Annex 9 of the Civil Aviation Convention, Section 5.21, requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

<sup>66</sup> For more information, see CRS In Focus IF11025, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*.

UAC.<sup>67</sup> Mexican UAC are repatriated in accordance with nine Local Repatriation Agreements (LRAs) covering the full length of the U.S.-Mexico border, which require that ICE notify the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).<sup>68</sup>

## Office of Refugee Resettlement

ORR's Unaccompanied Alien Children Program provides for custody and care of unaccompanied minors who have been apprehended and referred by CBP, ICE, or other federal agencies. The TVPRA requires that UAC in HHS custody "be promptly placed in the least restrictive setting that is in the best interest of the child."<sup>69</sup> The HSA requires ORR to *develop a plan* to ensure the timely appointment of legal counsel for each UAC,<sup>70</sup> ensure the child's interests are considered in decisions and actions relating to care and custody, and oversee the infrastructure and personnel of UAC residential facilities, among other responsibilities.<sup>71</sup> Like CBP, ORR screens each UAC to determine if the child has been a victim of a severe form of trafficking in persons; if there is credible evidence that the child would be at risk if returned to his/her country of nationality or last habitual residence; and if the child has a possible claim to asylum.<sup>72</sup>

ORR arranges to house the unaccompanied child within its network of shelters while seeking to place him or her with a sponsor, usually a family member. According to ORR, the majority of the youth are cared for initially through a network of about 290 state-licensed shelters in 29 states.<sup>73</sup> These ORR-funded and supervised care providers offer classroom education, mental health and medical health services, case management, and socialization and recreation.<sup>74</sup> ORR oversees different types of shelters to accommodate unaccompanied children with different circumstances,

<sup>67</sup> An additional officer is added for each group exceeding five UAC. The gender of the officers corresponds to the gender of the children repatriated. ICE Congressional Relations, email correspondence, May 16, 2014, and confirmed by CRS, August 6, 2019.

<sup>68</sup> Ibid. For more information, see DHS, "Updated U.S. Mexico Local Repatriation Arrangements," May 31, 2022.

<sup>69</sup> §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(c)(2). For background information, see "What is the 'best interest of the child' standard, and how does it apply to immigration detention and removal decisions?" in archived CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*.

<sup>70</sup> Section 462(b) of the HSA describes conditions for the care and placement of UAC in federal custody. Regarding legal counsel, the statutory language states: "...the Director of the Office of Refugee Resettlement shall be responsible for ... coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act."

<sup>71</sup> Section 235(c) of the TVPRA and Section 462(b) of the Homeland Security Act of 2002 (HSA, P.L. 107-296) describe conditions for the care and placement of UAC in federal custody.

<sup>72</sup> As noted previously, all UAC are initially screened by CBP for trafficking victimization or risk as well as possible claims to asylum, regardless of country of origin. CBP shares some of this information with ORR. For more information, see HHS, Office of Inspector General, "Separated Children Placed in Office of Refugee Resettlement Care," HHS-OIG Issue Brief, OEI-BL-18-00511, January 2019.

<sup>73</sup> ORR, *ORR Influx Care Facilities for Unaccompanied Children*, Fact Sheet, May 31, 2024; and HHS, Administration for Children and Families, *Report to Congress on Unaccompanied Alien Children Program, Facility Oversight* (undated).

<sup>74</sup> For more information on ORR services provision for unaccompanied children, see ORR, *ORR Unaccompanied Children Program Policy Guide* (hereinafter, "*ORR Policy Guide*"), "Section 3: Services," January 22, 2024.



including standard shelter care, secure care, and transitional foster care.<sup>75</sup> Unaccompanied children spent an average of 27 days in ORR care in FY2023.<sup>76</sup>

ORR shelter personnel facilitate the release of UAC to family members or other sponsors who are able to care for them. Federal statute does not prescribe, but the *Flores Agreement* outlines, the following preference ranking for sponsor types: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child's parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.<sup>77</sup> Removal proceedings initiated by CBP continue following an unaccompanied child's placement with a sponsor.

In making these placement determinations, ORR generally requires a background check of all potential sponsors and for any of their adult household members, with the following exceptions:

- The child is placed with a parent or legal guardian, and
  - ORR determines that the child is not especially vulnerable;
  - the child is not subject to a mandatory TVPRA home study; and
  - no other safety concerns manifest, including relating to abuse or neglect.<sup>78</sup>

All potential sponsors complete a sponsor assessment process that identifies risk factors and other potential safety concerns, and undergo a public records background check of criminal history and sex offender registry databases.

If ORR has a safety concern about a related sponsor or seeks to release the child to an unrelated sponsor, background checks are also conducted on all adult household members and individuals identified in the potential sponsor's care plan.<sup>79</sup> In a range of circumstances, ORR may require a home study as an additional precaution.<sup>80</sup> In most cases, ORR must notify a UAC's consulate of his or her custody.

<sup>75</sup> Standard shelter care refers to a minimally restrictive level of care for most UAC without special needs. Secure care facilities are generally reserved for children with behavioral issues, a history of violent offenses, or who pose a threat to themselves or others. For more information on shelters and ORR's policies for placing unaccompanied children in secure settings, see *ORR Policy Guide*, "Section 1.21 Placement Considerations," January 27, 2015, and "Section 1.24 Secure and Staff Secure Care Provider Facilities," October 27, 2022; and *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997), Exhibit 2.

<sup>76</sup> ORR, "Fact Sheets and Data," May 14, 2024, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>77</sup> *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997). ORR's sponsor categories differ by grouping but not hierarchical order. See *ORR Policy Guide*, "Section 2.2.1 Identification of Qualified Sponsors," March 8, 2022.

<sup>78</sup> See *ORR Policy Guide*, "Section 2.5 Sponsorship Assessment Background Check Investigations," February 13, 2024.

<sup>79</sup> ORR requires fingerprinting for potential sponsors who are unrelated individuals; non-immediate family members; individuals who have never previously served as the unaccompanied child's primary caregiver; or immediate relatives (and non-sponsor household members) where ORR has identified risk factors, ordered a home study, or considers the UAC to be especially vulnerable. Fingerprints are cross-checked with the Federal Bureau of Investigation's (FBI) National Criminal History Check and state repository records. At the same time, DHS databases are also searched.

<sup>80</sup> A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being and involves background checks of both the sponsor and any adult household members, one or more home visits, a face-to-face interview with the sponsor and potentially with other household members, and post-release services. Pursuant to the TVPRA of 2008, home studies are required when the child (1) is a victim of a severe form of trafficking in persons; (2) has a recognized disability as defined by Section 3 of the Americans with Disabilities Act; and (3) has been a victim of harmful abuse. ORR also requires home studies for sponsors who possess risk factors for abuse; for unrelated sponsors seeking to sponsor multiple children; and for unrelated sponsors of children under age 13. See *ORR Policy Guide*, "Section 2.4 Sponsor Assessment Criteria and Home Studies," February 13, 2024.

ORR must make a determination prior to unification that the sponsor is capable of providing for the child's physical and mental well-being.<sup>81</sup> In addition, the parent or guardian is required to complete a Parent Reunification Packet, which requires an attestation to agree to take responsibility for the UAC and provide proper care.<sup>82</sup> ORR reports that most children it serves are reunified with family members.<sup>83</sup>

In cases where a sponsor cannot be located, UAC are placed in a long-term care setting, such as community based foster care or an extended care group home.<sup>84</sup> According to ORR, long-term foster care involves "ORR-funded community-based foster care placements and services to which eligible unaccompanied children are transferred after a determination is made that the child will be in ORR custody for an extended period of time. Unaccompanied children in ORR long-term foster care typically reside in licensed foster homes, attend public school, and receive community-based services."<sup>85</sup>

Post-placement, ORR requires that its shelter care providers conduct a *Safety and Well Being Follow-Up Call* 30 days after the child's release to confirm the child's safety, living arrangements, school enrollment, and awareness of upcoming court dates.<sup>86</sup> For cases that required a home study, ORR provides *Post-Release Services* that link children and their sponsors to community-based services. Similar services are also offered by the agency's *National Call Center*. Children, sponsors, and others can report confirmed or suspected incidents of sexual abuse or harassment that occurred at ORR shelters through the agency's *UAC Sexual Abuse Hotline*. Concerns have been raised repeatedly that ORR's post-placement procedures are insufficient to ensure the well-being and safety of all placed children (see "ORR Sponsor Background Checks and Post-Placement Procedures").<sup>87</sup>

**Figure 2** shows both annual UAC apprehensions and annual referrals of unaccompanied children to ORR since FY2009. As expected, total ORR referrals increased with total apprehensions, and as children from countries other than Mexico increasingly dominated total UAC apprehensions, the percentage of apprehended UAC referred to ORR also increased. In FY2009, when

<sup>81</sup> *ORR Policy Guide*: Section 2.1, April 1, 2024.

<sup>82</sup> HHS, Administration for Children & Families, Unaccompanied Alien Children Program, *ORR Family Reunification Packet for Sponsors (English/Español)*, April 2, 2021, <https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services>.

<sup>83</sup> In the first six months of FY2024, 89% of discharged UAC were released by ORR to a sponsoring family member. (Of this group 46% were parents or legal guardians, and 43% were other close relatives.) About 11% of discharged UAC were released to other sponsors, such as distant relatives and unrelated adult individuals. Source: HHS, "Latest UC Data – FY2024," June 4, 2024, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2024/index.html>. Unaccompanied minors who are not discharged represent children without identified sponsors who exited ORR care, including children who age out (reach age 18), who accept voluntary departure, or who receive a designation as an Unaccompanied Refugee Minor or other discharge option.

<sup>84</sup> According to ORR, a child is a candidate for long term care if the child is expected stay in ORR custody for at least four months for lack of a viable sponsor; a legal service provider has identified the child as potentially eligible for immigration relief (unless waived by ORR), and the child is under age 17½ when placed. ORR may also consider a long-term care placement for an unaccompanied child who will have a longer stay due to other circumstances. Such placement is prioritized for children under age 13, sibling groups with one child younger than 13, pregnant and parenting teens, and children with special needs, including mental health needs. See *ORR Policy Guide*, "Section 1.2.6 Long Term Foster Care," January 12, 2024.

<sup>85</sup> HHS, Administration for Children and Families, Office of Refugee Resettlement, email correspondence, May 23, 2019. See *ORR Policy Guide*, "Section 3.6 ORR Long Term Foster Care," October 5, 2015.

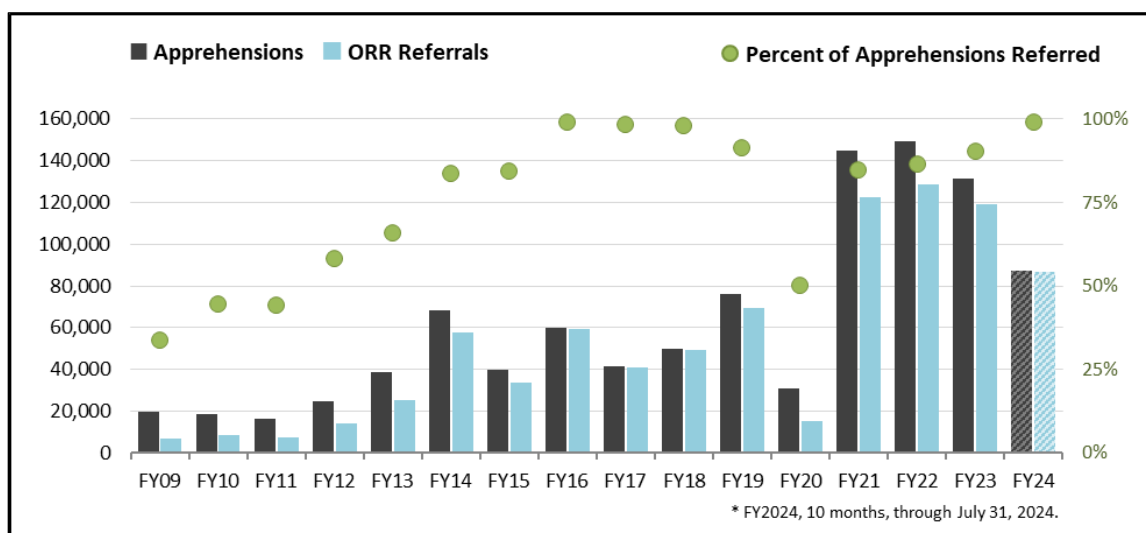
<sup>86</sup> *ORR Policy Guide*, "Section 6.1, Overview of Post-Release Services," February 28, 2024.

<sup>87</sup> For an assessment of ORR's post-release services, see Mark Greenberg, Kylie Grow, Stephanie Heredia, Kira Monin, and Essey Workie, *Strengthening Services for Unaccompanied Children in U.S. Communities*, Migration Policy Institute, June 2021.

unaccompanied children from countries other than Mexico comprised 18% of all UAC apprehensions, the proportion of children referred to ORR was 34% of total apprehensions. In FY2024, when unaccompanied children from the Northern Triangle and countries other than Mexico and Canada comprised 71% of all UAC apprehensions, the proportion of UAC referred to ORR was 99%.<sup>88</sup>

**Figure 2. UAC Apprehensions and Referrals to ORR Custody**

FY2009-FY2024\*



**Source:** Apprehensions: See **Figure 1** sources above; Referrals: FY2009-FY2023: HHS, Administration for Children and Families, *Fiscal Year 2025, Justification of Estimates for Appropriations Committees*, p. 47; FY2024: HHS, “Latest UC Data – FY2024.”

**Notes:** \*FY2024 figures represent the first 10 months of the fiscal year, through July 2024. CRS computed the FY2024 ORR referral figure by summing, for the first 10 months of FY2024, the product of each month’s 30-day average number of daily UC referrals multiplied by the number of days in that month. Figures for FY2020 and FY2021 represent encounters that include apprehensions under Title 8 and expulsions under Title 42. **Figure 2** begins with FY2009, the first year when the TVPRA was fully enacted.

**Figure 2** also shows that this trend reversed briefly in FY2020, when the COVID-19 pandemic lowered the Central American proportion of all unaccompanied minors apprehended at the Southwest border, and when many unaccompanied children were initially expelled under Title 42. It resumed in FY2021 when Title 42 no longer applied to unaccompanied children.

Some unaccompanied children in ORR custody will turn 18 while still in ORR custody, thereby *aging out* of UAC status as defined in statute.<sup>89</sup> When that occurs, ORR’s legal authority to retain custody of the children ends. ORR must then turn those children over to ICE custody where they may be being placed into restrictive custody and detained in adult detention facilities. Concerns have repeatedly been raised about the potentially traumatic impact to children of abruptly transitioning from a child welfare setting to an adult detention setting on or soon after their 18<sup>th</sup>

<sup>88</sup> See sources for **Figure 1** and **Figure 2**. As noted above, not all UAC are referred to ORR; for instance, many UAC from Mexico voluntarily return home.

<sup>89</sup> ORR data for FY2024 YTD indicate that 37% of unaccompanied children in ORR custody were at least 17 years old. See ORR, “Latest UC Data – FY2024,” June 27, 2024, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2024/index.html>.

birthday.<sup>90</sup> In September 2021, a federal judge issued a ruling requiring ICE to change its practices and prioritize placing children in the “least restrictive setting,” which often involves something other than federal custody.<sup>91</sup> ORR’s policy manual now requires “post-18” planning.<sup>92</sup>

## U.S. Citizenship and Immigration Services

DHS’s U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by unaccompanied children who are placed in formal removal proceedings.<sup>93</sup> If either CBP or ICE determines that an apprehended child is a UAC and transfers the child to ORR custody, USCIS generally will take jurisdiction over any asylum application, even where evidence shows that the child subsequently reunited with a parent or legal guardian after CBP or ICE made the UAC determination.<sup>94</sup>

The TVPRA requires that unaccompanied children who are not initially granted asylum by USCIS resume their formal removal proceedings before an EOIR immigration judge, who may also hear their claims for asylum.<sup>95</sup> Unaccompanied children therefore receive two opportunities to present their asylum claims, first with USCIS, and second during formal immigration court proceedings.<sup>96</sup>

USCIS also has initial jurisdiction over asylum applications filed by unaccompanied children with pending claims in immigration court, with cases on appeal before the Board of Immigration Appeals, or with petitions under review with federal courts.<sup>97</sup>

## Executive Office for Immigration Review

EOIR conducts removal proceedings and other immigration hearings.<sup>98</sup> An immigration removal proceeding allows the foreign national and the U.S. government to present testimony so an immigration judge can determine whether the foreign national is removable or qualifies for some form of protection or relief from removal (i.e., permission to remain in the United States either temporarily or permanently). The TVPRA requires that HHS ensure, “to the greatest extent practicable,” that UAC have access to pro bono legal counsel. It also authorizes HHS to appoint

<sup>90</sup> See, for example, John Burnett, “Migrant Youth Go From A Children’s Shelter To Adult Detention On Their 18<sup>th</sup> Birthday,” *NPR*, February 22, 2019; and Emily Stewart, “Immigrant children can be detained, prosecuted, and deported once they turn 18,” *Vox*, June 21, 2018.

<sup>91</sup> For more information, see National Immigrant Justice Center, “Federal Court Orders ICE to End Unlawful Detention of Immigrant Youth Who Turn 18 in Federal Custody,” press release, September 22, 2021.

<sup>92</sup> See *ORR Policy Guide*, Section 3.3.2, which requires care providers to explore planning options for the future, including for teenagers who turn 18 and age out of ORR custody. For more information, see ORR, *Field Guidance #9, Interim Guidance – Age Outs and Post-18 Planning*, February 17, 2021. For statistics on outcomes of children who aged out of ORR custody, see ICE, *ICE Age-Outs*, April 13, 2021.

<sup>93</sup> INA §208(b)(3)(C), 8 U.S.C. §1158(b)(3)(C). For information on asylum, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

<sup>94</sup> The initial jurisdiction procedures under the TVPRA were implemented on March 23, 2009, the act’s effective date.

<sup>95</sup> 8 C.F.R. §208.14(c)(1). UAC must appear at any scheduled immigration court hearings, even after applying for asylum with USCIS.

<sup>96</sup> For background information on the UAC asylum process, see archived CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*.

<sup>97</sup> INA §208(b)(3)(C), 8 U.S.C. §1158(b)(3)(C).

<sup>98</sup> For more information on immigration courts, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*; and EOIR, “Executive Office for Immigration Review: An Agency Guide,” December 2017.

independent child advocates for child trafficking victims and other vulnerable unaccompanied children.<sup>99</sup>

EOIR's policies for conducting UAC removal hearings are intended to ensure that children understand the nature of the proceedings, effectively present evidence about their cases, and have appropriate assistance. Under these policy guidelines, immigration judges should

- establish special dockets for UAC that are separate from the general population,
- facilitate pro bono legal representation for unrepresented children,
- inform children of relief from removal for which they may be eligible,
- be cognizant of children's limitations for articulating their cases,
- allow child-friendly courtroom modifications,<sup>100</sup>
- 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.<sup>101</sup>

In response to the UAC surge from FY2011 to FY2014, EOIR issued new guidelines in 2014 that prioritized cases involving unaccompanied children and non-detained families above other cases in the immigration courts and placed these cases on the same level as those of detained foreign nationals.<sup>102</sup> EOIR has since revised these priorities three times. Its most recent guidance, issued December 21, 2023, does not prioritize UAC cases.<sup>103</sup>

Most recently, EOIR reported a 56% representation rate for all pending UAC cases and a 60% rate for all cases pending more than one year (see the "Legal Representation" section).<sup>104</sup> It also reported that, as of the second quarter of FY2024, the median completion time for a UAC case was 1,254 days (3.4 years).<sup>105</sup>

<sup>99</sup> TVPRA (P.L. 110-457), Section 235(b), codified at 8 U.S.C. §1232(c)(5).

<sup>100</sup> These may include judges not wearing robes, allowing the child to have a toy, permitting the child to testify from a seat rather than the witness stand, and allowing more breaks during the proceedings.

<sup>101</sup> EOIR, *Children's Cases in Immigration Court*, DM 24-01, David L. Neal, Director, December 21, 2023. This memorandum replaces OPPM 17-03 from December 20, 2017.

<sup>102</sup> EOIR's priorities were (1) unaccompanied child; (2) adults with a child or children detained; (3) adults with a child or children released on alternatives to detention; and (4) recently detained border crossers. See statement of Juan P. Osuna, Director of Executive Office of Immigration Review, U.S. Department of Justice, *The President's Emergency Supplemental Request for Unaccompanied Children and Related Matters*, in U.S. Congress, Senate Committee on Appropriations, hearings, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 10, 2014. Some subsequently criticized these policies for rushing the adjudication process. See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Oversight of the Executive Office for Immigration Review*, statement of ranking member Zoe Lofgren, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., December 3, 2015, transcript serial no. 114-57, pp. 34-35.

<sup>103</sup> EOIR, *Children's Cases in Immigration Court*, DM 24-01, David L. Neal, Director, December 21, 2023. EOIR's priorities for case completion include (1) all cases involving individuals in detention or custody; (2) cases subject to a statutory or regulatory deadline; (3) cases subject to a federal court-ordered deadline; and (4) cases otherwise subject to an established benchmark for completion. As such, UAC are not included in these categories. Additional priorities are outlined in Appendix A of the 2018 guidance. See U.S. Department of Justice, Executive Office for Immigration Review, memorandum from James R. McHenry III, Director, *Case Priorities and Immigration Court Performance Measures*, January 17, 2018.

<sup>104</sup> EOIR, "Adjudication Statistics: Current Representation Rates," January 18, 2024.

<sup>105</sup> EOIR, "Adjudication Statistics: Median Unaccompanied Noncitizen Child (UAC) Case Completion and Case Pending Time," April 19, 2024.



## Administration Action

The following section describes (chronologically) actions taken by the Obama, Trump, and Biden Administrations since 2014 to respond to increased levels of UAC apprehensions. Some issues discussed are associated with multiple administrations. The **Appendix** details congressional appropriations over this same period.

### Obama Administration

In response to the surge of UAC apprehensions, the Obama Administration in June 2014 announced the formation of a Unified Coordination Group headed by the Administrator of the Federal Emergency Management Agency (FEMA), with representatives from key agencies.<sup>106</sup> The FEMA administrator's role was to "lead and coordinate Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law ... are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation."<sup>107</sup>

From the outset of the 2014 surge, CBP and ICE provided for the care of unaccompanied children in temporary DHS custody.<sup>108</sup> DHS coordinated with the Departments of Health and Human Services, State, and Defense, as well as the General Services Administration and other agencies, to implement a coordinated and prompt response within the United States in the short term, and in the longer term to work with migrant-sending countries to undertake reforms to address the causes behind the recent flows.<sup>109</sup>

To manage the UAC influx, ORR relied upon its network of shelters operated by nonprofit organizations with experience providing UAC-oriented services (e.g., medical care, education). HHS also coordinated with the Department of Defense (DOD), which temporarily made facilities available for UAC shelter at Lackland Air Force Base, Texas, Naval Base Ventura County, California, and Fort Sill, Oklahoma. Arrangements to house UAC at all three sites ended August 2014.<sup>110</sup> Subsequently, two other DOD locations, Holloman Air Force Base, New Mexico and Fort Bliss, Texas, were used to shelter children in 2016 and in 2016-2017, respectively.<sup>111</sup>

In FY2014, EOIR's Legal Orientation Program for Custodians of Unaccompanied Children, tasked with providing legal orientation presentations to sponsors of unaccompanied children in removal proceedings, served over 12,000 custodians for children released from ORR custody.<sup>112</sup>

<sup>106</sup> DHS, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014; and The White House, Office of the Press Secretary, *Presidential Memorandum—Response to the Influx of Unaccompanied Alien Children Across the Southwest Border*, June 2, 2014.

<sup>107</sup> Ibid.

<sup>108</sup> As one of its missions, ICE works to dismantle organizations that smuggle UAC into the United States.

<sup>109</sup> DHS, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014.

<sup>110</sup> David Rogers, "Kid shelters at military posts to close," *Politico*, August 4, 2014.

<sup>111</sup> See archived CRS Insight IN10937, *History of Use of U.S. Military Bases to House Immigrants and Refugees*.

<sup>112</sup> See U.S. Department of Justice, Administrative Review and Appeals, *FY 2017 Performance Budget Congressional Budget Submission*, p 4. In 2010, DOJ's Office of Legal Access Programs established the Legal Orientation Program for Custodians of Unaccompanied Children (LOPC). The program's goals are "to inform the children's custodians of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking, as provided under the Trafficking Victims Protection Reauthorization Act of 2008." The LOPC, a collaboration between EOIR, ORR, and nongovernmental partners, operates a national call center that provides scheduling assistance and basic legal information to UAC custodians. For more information, see EOIR, "Legal Orientation Program for Custodians of Unaccompanied Children," March 24, 2023.

To provide children entering the immigration court system with legal representation during removal proceedings, EOIR partnered with the Corporation for National and Community Service (CNCS), a federal agency that administers AmeriCorps.<sup>113</sup> Together they created “Justice AmeriCorps” in 2015, a grant program that enrolled approximately 100 lawyers and paralegals as AmeriCorps members.<sup>114</sup> The Justice AmeriCorps program was administered from January 1, 2015, to August 31, 2017.

In June 2014, DHS initiated a program to work with Central American countries on a public education campaign to dissuade UAC from attempting to migrate illegally to the United States.<sup>115</sup> Additional initiatives included collaborating with Central American governments to combat gang violence, strengthening citizen security, spurring economic development, and supporting the reintegration and repatriation of returned citizens.<sup>116</sup>

In September 2014, the Obama Administration announced a new Central American Minors (CAM) Refugee and Parole Program to provide a safe, legal, and more orderly alternative to U.S. migration for unaccompanied children to join relatives in the United States.<sup>117</sup> Targeting children from El Salvador, Guatemala, and Honduras, the program was intended to discourage U.S. migration by enabling some children to be considered for refugee status while in their home countries (typically, refugees are processed in a third country). In August 2017, the Trump Administration terminated the CAM program. The Biden Administration reactivated the program and expanded its eligibility criteria.<sup>118</sup>

## Trump Administration

The Trump Administration, also facing high levels of UAC and *family unit*<sup>119</sup> apprehensions, took steps to provide housing for unaccompanied minors while also attempting to reduce both the flow of all migrants illegally crossing the Southwest border and the number of families who filed what Administration officials perceived were meritless asylum claims solely to gain U.S. entry.<sup>120</sup>

Actions by the Trump Administration regarding unaccompanied children emphasized efforts to provide temporary housing for UAC and reduce the number of adults migrating to the United States with children as family units. They included increasing the use of temporary influx shelters in response to an increasing UAC caseload; sharing more sponsor information between ORR, CBP, and ICE; reclassifying children whose parents were prosecuted for illegal entry as UAC and

<sup>113</sup> For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*.

<sup>114</sup> Department of Justice and the Corporation for National and Community Service, “Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors,” press release, June 6, 2014.

<sup>115</sup> The White House, Office of the Press Secretary, “Fact Sheet: Unaccompanied Children from Central America,” June 20, 2014.

<sup>116</sup> Ibid.

<sup>117</sup> For background information, see archived CRS Report R44020, *In-Country Refugee Processing: In Brief*.

<sup>118</sup> For more information, see USCIS, “Central American Minors (CAM) Program,” March 7, 2024, at <https://www.uscis.gov/CAM>.

<sup>119</sup> CBP defines a family unit as an individual member of a migrant family that includes at least one parent or guardian migrating with at least one child. Each family member is counted separately in the number of encounters.

<sup>120</sup> See, for example, The White House, “President Donald J. Trump Is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis,” fact sheet, April 29, 2019; and “Our Nation’s Weak Asylum Laws are Encouraging an Overwhelming Increase In Illegal Immigration,” fact sheet, November 1, 2018.

housing them in ORR shelters; and proposing new regulations to expand the amount of time children can spend in detention beyond the existing 20-day limit.<sup>121</sup>

## Increasing UAC Shelter Capacity with Temporary Facilities

To respond to surges of unaccompanied children arriving at the Southwest border alone or as part of family units who were subsequently separated, ORR employed temporary *emergency intake sites* (EIS)<sup>122</sup> and *influx care facilities* (ICF)<sup>123</sup> to supplement its existing network of standard state-licensed shelters. These two types of facilities are considerably larger than most standard ORR-supervised shelters. They are typically operated by private companies, and are often located on federally owned land or leased properties, thereby exempting them from state or local childcare licensing standards.<sup>124</sup> Such facilities can be set up relatively quickly compared to conventional ORR-supervised state-licensed shelters that require between six and nine months to open.<sup>125</sup> They are also more expensive to operate.<sup>126</sup>

<sup>121</sup> For a comprehensive summary of major immigration enforcement efforts under the Trump Administration, see Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, Migration Policy Institute, July 2020. For an overview of apprehension trends during the Trump Administration, see CRS Report R46012, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border*.

<sup>122</sup> ORR may operate EIS when it cannot place and transfer children into standard care facilities or influx care facilities within 72 hours of referral. EIS are designed to provide mass emergency care that meet children's basic needs but not the full range of services available at standard care facilities or ICF at the time of opening; however, after six months of operation, EIS are expected to meet certain Flores standards and staffing ratios. See Administration for Children & Families, Office of Refugee Resettlement, *Field Guidance #13 – Emergency Intake Site (EIS) Instructions and Standards*, revised October 24, 2022.

<sup>123</sup> ORR defines *influx care facility* as “A type of care provider facility that is opened to provide temporary emergency shelter and services for unaccompanied alien children during an influx or emergency. Influx care facilities may be opened on Federally owned or leased properties, in which case, the facility would not be subject to State or local licensing standards; or, at facilities otherwise exempted by the State licensing authority.” *ORR Policy Guide*, Guide to Terms.

<sup>124</sup> While ICFs have been used by ORR since 2014, EISs were established in March 2021. EISs provide a higher standard of care than that found in CBP facilities, but reportedly, HHS has not committed to have such facilities comply with State laws, regulations, and codes as it has with ICFs. See Danilo Zak, “Explainer: Emergency Shelters and Facilities Housing Unaccompanied Children,” National Immigration Forum, May 4, 2021; and Dara Lind, “‘No Good Choices’: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021.

<sup>125</sup> Bipartisan Policy Institute, “This Week in Immigration,” Episode 94, podcast interview with Mark Greenberg, Migration Policy Institute, May 17, 2021.

<sup>126</sup> In 2021, temporary facilities reportedly cost ORR about \$775 daily per child compared to about \$290 daily for conventional shelters. See Silvia Foster-Frau, “First migrant facility for children opens under Biden,” *Washington Post*, February 22, 2021.



Between March 2018 and July 2019, ORR temporarily opened three such shelters, in Tornillo, Texas (Tornillo shelter),<sup>127</sup> Homestead, Florida (Homestead shelter),<sup>128</sup> and Carrizo Springs, Texas,<sup>129</sup> and closed them when they were no longer needed.

At the end of December 2018, ORR was housing more than 14,000 children in all of its shelters (including influx shelters), an increase from a reported 9,200 children in January 2017.<sup>130</sup> In December 2018, in response to the growing number of UAC in ORR custody, as well as a reported request from shelter operator BCFS Health and Human Services,<sup>131</sup> the Trump Administration relaxed the requirements of its information collection and sharing policy with regard to potential UAC sponsors. (See “Information Sharing between ORR, ICE, and CBP” below.) According to one news report, the number of children housed in all ORR-supervised shelters subsequently dropped from about 14,700 in December to 11,500 by mid-January 2019.<sup>132</sup>

As it did during the Obama Administration, HHS coordinated with DOD to discuss and possibly open temporary influx shelter facilities on U.S. military installations. Based on anticipated volume, HHS reactivated, for potential use, a temporary emergency influx shelter at Fort Sill Army Base near Lawton, Oklahoma, about 80 miles southwest of Oklahoma City. The facility had the capacity to house approximately 1,400 children, but the Trump Administration subsequently decided not to use the facility.<sup>133</sup>

In April 2020, some children reportedly were housed in hotels while awaiting their expulsions under Title 42.<sup>134</sup> The housing, arranged by ICE through a private contractor, involved hundreds and possibly thousands of UAC in at least a half dozen locations.<sup>135</sup> Child advocates raised concerns that such arrangements violated the TVPRA because the hotels were not sufficiently monitored; employed workers who were not licensed to provide childcare; and, children’s parents or lawyers were not informed of their whereabouts. Some children were reportedly kept in hotels

<sup>127</sup> For more information, see HHS, “Unaccompanied Alien Children sheltered at Tornillo LPOE, Tornillo, Texas,” fact sheet, updated December 26, 2018; and Tanvi Misra, “CityLab Daily: The Life and Death of an American Tent City,” *Citylab*, January 15, 2019.

<sup>128</sup> For more information, see HHS, Administration for Children and Families, “Unaccompanied Alien Children Job Corps Site, Homestead, Florida,” fact sheet, February 26, 2019; HHS, Office of the Inspector General, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance with Federal Requirements*, A-12-20-20001, December 2020; John Burnett, “Inside The Largest And Most Controversial Shelter For Migrant Children In The U.S.,” *NPR*, February 13, 2019; and Alexi C. Cardona, “Recapping the Five Biggest Controversies at the Homestead Migrant Children’s Camp,” *Miami New Times*, February 26, 2021.

<sup>129</sup> HHS, Administration for Children and Families, “Unaccompanied Alien Children Sheltered at Carrizo Springs Site, Carrizo Springs, Texas,” press release, July 22, 2019; and James Barragán, “Last group of migrant children to leave Carrizo Springs facility today—less than 1 month after it opened,” *The Dallas Morning News*, July 25, 2019.

<sup>130</sup> Arelis R. Hernández, “Trump administration is holding record number of migrant youths,” *Washington Post*, December 21, 2018; and Andres Leighton, “Nearly 15,000 migrant children in federal custody jammed into crowded shelters,” *CNBC*, December 19, 2018.

<sup>131</sup> Robert Moore, “Tent City Operator’s Request for Policy Shift Could Reduce the Mass Detention of Migrant Children,” *Texas Monthly*, December 15, 2018. Note that BCFS is not an acronym.

<sup>132</sup> Miriam Jordan, “Trump Administration to Nearly Double Size of Detention Center for Migrant Teenagers,” *New York Times*, January 15, 2019.

<sup>133</sup> Ken Miller, “Plan halted to house migrant kids at Oklahoma’s Fort Sill,” *Army Times*, July 28, 2019; and HHS, Administration for Children Youth, and Families, Legislative Affairs, email correspondence to CRS, June 13, 2019.

<sup>134</sup> Daniel Gonzalez, “124 immigrant children held in 3 Phoenix hotels under Trump policy, court records show,” *Arizona Republic*, September 23, 2020; “Migrant children held in hotels with “no security” or protection from COVID-19, civil rights advocate says,” *CBS News*, July 23, 2020;

<sup>135</sup> Caitlin Dickerson, “A Private Security Company Is Detaining Migrant Children at Hotels,” *New York Times*, October 21, 2020.

for weeks prior to expulsion.<sup>136</sup> DHS officials maintained that hotels had housed UAC several times during the past decade, and that using them protected the public and others from the spread of COVID-19 at standard ORR shelters.<sup>137</sup> Judge Dolly Gee, overseeing the *Flores Agreement*, required DHS to end the practice by September 28, 2020.<sup>138</sup>

ORR maintained that its temporary shelters possess similar standards, policies, and services found at conventional ORR-supervised state-licensed shelters.<sup>139</sup> However, child welfare advocates have long expressed concerns about the temporary facilities' large sizes, remote locations,<sup>140</sup> durations of stay,<sup>141</sup> and processes for transferring children to the facilities.<sup>142</sup> In November 2018, HHS's OIG identified significant vulnerabilities regarding insufficient shelter personnel background checks and numbers of mental health clinicians at the Tornillo facility.<sup>143</sup> The following month, HHS responded by describing actions taken in response to that report's findings.<sup>144</sup> In February 2019, a congressional delegation visiting the Homestead site characterized its conditions as inhumane and unsuitable for children.<sup>145</sup> Other immigration observers refuted that characterization.<sup>146</sup> In February 2019, an internal report indicated that ORR had received 4,556 allegations of sexual abuse or sexual harassment between FY2015 and FY2018, the more serious of which (1,303) were reported to DOJ.<sup>147</sup> Further investigations revealed shortcomings with ORR's system for reporting such incidents within its shelter network.<sup>148</sup> Concerns about ORR

<sup>136</sup> Daniel Gonzalez, "ICE contractor still holding migrant children in Arizona hotels, acting DHS secretary says," *Arizona Republic*, August 7, 2020.

<sup>137</sup> Testimony of Chad Wolf, Acting Secretary of Homeland Security, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Homeland Security Secretary Confirmation Hearing*, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 23, 2020.

<sup>138</sup> Nomann Merchant, "Judge orders US to stop detaining migrant children in hotels," *AP News*, September 4, 2020.

<sup>139</sup> *ORR Policy Guide*, Section 7.

<sup>140</sup> Muzaffar Chishti and Faye Hipsman, "Unaccompanied Minors Crisis Has Receded from Headlines But Major Issues Remain," *Migration Information Source*, Migration Policy Institute, September 25, 2014.

<sup>141</sup> According to one news report, unaccompanied children spent an average of 25 days in the Tornillo shelter out of an average 59 total days in HHS custody. See Carmen Sesin, "'Difficult to watch': House Democrats tour housing for migrant children," *NBC News*, February 19, 2019.

<sup>142</sup> See, for example, Caitlin Dickerson, "Migrant Children Moved Under Cover of Darkness to a Texas Tent City," *New York Times*, September 30, 2018.

<sup>143</sup> HHS, Office of Inspector General, *Memorandum: The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000)*, November 27, 2018. See also HHS, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431, September, 2019.

<sup>144</sup> Letter from Lynn A. Johnson, Assistant Secretary, HHS, Administration for Children and Families, to Amy J. Frontz, Assistant Inspector General for Audit Services, HHS, December 21, 2018.

<sup>145</sup> See, for example, Carmen Sesin, "'Difficult to watch': House Democrats tour housing for migrant children," *NBC News*, February 19, 2019; and Angelina Chaplin, "Florida Detention Center Expands, Packing In Migrant Children 'Like Sardines'," *Huffington Post*, February 12, 2019.

<sup>146</sup> See, for example, Preston Huennekens, "Is the Homestead UAC Shelter Actually a Prison?" Center for Migration Studies, March 6, 2019.

<sup>147</sup> Office of Refugee Resettlement, "NadUAC1213 Sexual Assaults by Date of Incident," undated. See also Matthew Haag, "Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says," *New York Times*, February 27, 2019.

<sup>148</sup> HHS, Office of Inspector General, *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*, OEI-09-18-00430, June 2020.

shelters, including sexual abuse,<sup>149</sup> have also been reported during the Biden Administration, (see “ORR Shelter Capacity” below).

## ORR Sponsor Background Checks and Post-Placement Procedures

Sizable increases in UAC referrals since FY2008 have challenged ORR to meet the demand for its services while maintaining related child welfare protocols and administrative standards.<sup>150</sup> These challenges attracted public attention in January 2016 when a Senate investigation found that some UAC sponsored by distant relatives and legal guardians were forced to work in oppressive conditions on an Ohio farm in 2014. The related Senate report outlined a range of what it characterized as serious deficiencies related to the safe placement of children with distant relatives and unrelated adults as well as post-placement follow-up.<sup>151</sup> During the Senate Homeland Security and Governmental Affairs Committee hearing that followed, HHS officials acknowledged limitations of their screening and post-placement follow-up procedures for such sponsors. They also contended that HHS’s liability terminates once custody of an unaccompanied minor is relinquished to a sponsor.<sup>152</sup> News reports indicate that DHS and HHS agreed to establish new guidelines within a year to prevent episodes such as the farm-related labor trafficking incident from reoccurring, an outcome that remained unfulfilled as of 2018.<sup>153</sup>

In April 2018, during a Senate Homeland Security Committee hearing, an HHS official testified that ORR was unable to contact 1,475 of the 7,635 unaccompanied children placed with sponsors between October and December of 2017.<sup>154</sup> According to HHS, ORR began voluntarily conducting post-placement outreach as a “30-day checkup” to ensure that children and their sponsors did not require additional services even though HHS maintained that it had no legal responsibility to locate UAC after placement with sponsors. Some observers suggested that many nonresponsive sponsors may be residing in the United States illegally and may be reluctant to respond to official post-placement outreach.<sup>155</sup> Other reports have found similar proportions of

<sup>149</sup> See, for example, Lauren Berg, “Shelter Ignored Workers’ Sex Abuse Of Migrant Kids, Feds Say,” *Law360*, July 18, 2024.

<sup>150</sup> GAO raised concerns about ORR’s lack of planning for its capacity needs, inconsistent monitoring of service provision by its nonprofit grantee organizations that provide shelter services, limited contact with children following their placement, and unreliable and unsystematic administrative recording of post-placement follow-up procedures. See U.S. Government Accountability Office, *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180, February 2016; and U.S. Government Accountability Office, *DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed*, GAO-18-506T, April 26, 2018. Similar concerns have been raised by Congress. See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of the Care of Unaccompanied Alien Children*, Staff Report, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., August 13, 2018.

<sup>151</sup> U.S. Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, staff report, undated.

<sup>152</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Adequacy of the Department of Health and Human Services’ Efforts to Protect Unaccompanied Alien Children From Human Trafficking*, hearing, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 28, 2016.

<sup>153</sup> U.S. Government Accountability Office, *DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed*, GAO-18-506T, April 26, 2018.

<sup>154</sup> Testimony of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 26, 2018.

<sup>155</sup> Amy Harmon, “Did the Trump Administration Separate Immigrant Children From Parents and Lose Them?” *New York Times*, May 28, 2018.

UAC unaccounted for, post-placement.<sup>156</sup> Concerns about ORR's inability to contact the sponsors of a significant portion of its referrals, post-placement, have persisted during the Biden Administration (see "Post-Release Services" below).

### Information Sharing between ORR, ICE, and CBP

As noted, ORR seeks sponsors, typically family members, for UAC to live with while they await their removal proceedings. For years, immigration enforcement advocates and some Members of Congress decried that a sizeable, yet indeterminate, proportion of UAC sponsors included unauthorized aliens, and that ORR neither collected, nor shared with DHS, information on sponsors' legal status. Immigration advocates contended that such information-sharing mandates would discourage sponsorship of unaccompanied children.

In April 2018, ORR, ICE, and CBP entered into a memorandum of agreement (MOA) to share information from when UAC are referred by either CBP or ICE to ORR, through ORR custody, and upon their release to a sponsor.<sup>157</sup> Under the MOA, ORR agreed to collect and share with ICE and CBP information about unaccompanied children in their custody, such as, any arrests, unauthorized absences, deaths, abuse experienced, and violent behavior, as well as age determination findings and gang affiliation information. The MOA also mandated the sharing of information about potential sponsors and all adults living with them. Such information included citizenship, immigration status, criminal history, and immigration history.

According to the agreement, ORR would share with ICE this information as well as biographic and biometric (fingerprint) information about potential sponsors and their household members. In return, ICE would provide ORR with the summary criminal and immigration histories of the potential sponsors and all adult members of their households so that ORR could make more complete suitability determinations regarding the UAC sponsors.

The Trump Administration and immigration enforcement advocates described the policy as necessary to ensure the safety and well-being of children placed with sponsors.<sup>158</sup> Immigrant advocates contended that the new policy would increase the number of children remaining in federal custody, increase detention costs, and extend family separation.<sup>159</sup> They also questioned the relevance of an adult's immigration status to a child's safe placement with a sponsor.<sup>160</sup>

After the policy was implemented, ICE began to arrest unauthorized aliens who came forward to sponsor unaccompanied children. From July through November 2018, ICE reportedly arrested 170 potential sponsors—109 of whom had no previous criminal histories—and placed them in

<sup>156</sup> See, for example, Stef W. Kight, "Exclusive: Government can't reach one-in-three released migrant kids," *Axios*, September 1, 2021; and HHS, Office of Inspector General, *HHS's Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children*, OEI-09-16-00260, July 2017.

<sup>157</sup> *Memorandum of Agreement Among the Office of Refugee Resettlement of the HHS, and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters*, April 13, 2018.

<sup>158</sup> See, for example, Andrew R. Arthur, "The Worst Provision in the Funding Bill: Think about the children," Center for Immigration Studies, February 16, 2019.

<sup>159</sup> See, for example, Melissa Hastings et al., "The ORR and DHS Information-Sharing Agreement and its Consequences," Justice for Immigrants, January 2019. Child welfare advocates have expressed grave concerns on how family separation impacts children. See, for example, American Academy of Pediatrics, Letter from Colleen A. Kraft, President, to The Honorable Kirstjen M. Nielsen, U.S. Secretary of Homeland Security, March 1, 2018.

<sup>160</sup> Tal Kopan, "ICE arrested undocumented adults who sought to take in immigrant children," *San Francisco Chronicle*, December 10, 2018.

deportation proceedings.<sup>161</sup> ICE confirmed these activities and estimated that 80% of active UAC sponsors and accompanying family members were residing in the country illegally.<sup>162</sup>

Some linked the new information-sharing agreement with increases in the average number of days unaccompanied children spent in ORR custody.<sup>163</sup> During FY2015 and FY2016, unaccompanied children spent an average of 38 and 40 days in ORR custody, respectively.<sup>164</sup> In FY2017, that average increased to 48 days. In FY2018, the figure increased to 60 days, and for the first three months of FY2019, it stood at 89 days<sup>165</sup> before declining to 55 days as of February 2020.<sup>166</sup> Other factors, such as the number of children that require shelter, may have affected the average time unaccompanied children were spending in ORR custody, making it difficult to attribute changes in average ORR custody time solely to the information-sharing MOA.

The Trump Administration relaxed some requirements of its information collection and sharing policy in December 2018. It continued to require background checks for all members of the sponsor's household over age 18 but limited the collection and sharing with DHS of biometric data to sponsors only, not other adults in the sponsor's household.<sup>167</sup>

## Zero Tolerance Immigration Enforcement Policy

On May 7, 2018, DOJ implemented a “zero tolerance” enforcement policy for persons who entered the United States illegally between ports of entry. Under the policy, DOJ sought to prosecute all adult foreign nationals apprehended crossing the border illegally, without exceptions for asylum seekers or migrants with minor children. Close to 3,000 children were initially reported to have been separated from accompanying parents and legal guardians as the result of the zero tolerance policy.<sup>168</sup> DOJ's policy represented a change in the level of enforcement of an existing statute rather than a change in statute or regulation.<sup>169</sup>

<sup>161</sup> Ibid.

<sup>162</sup> Testimony of Matthew Albence, executive associate director of Immigration and Customs Enforcement, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 18, 2018.

<sup>163</sup> See Tanvi Misra, “CityLab Daily: The Life and Death of an American Tent City,” *Citylab*, January 15, 2019; and National Center for Youth Law, Center for Human Rights and Constitutional Law, and the University of California Davis School of Law Immigration Clinic, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, February 2019.

<sup>164</sup> ORR, “Fact Sheets and Data,” May 14, 2024, at <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>.

<sup>165</sup> See Monique O. Madan, “They pushed Trump to close Texas shelter for migrant kids. Their next target – Homestead,” *Miami Herald*, February 8, 2019.

<sup>166</sup> HHS, Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, fact sheet, April 1, 2020.

<sup>167</sup> HHS, Administration for Children and Families, “Unaccompanied Alien Children Program,” Fact Sheet, December 2018. On March 12, 2021, DHS and HHS issued a joint statement announcing the termination of the 2018 agreement and the signing of a new Memorandum of Agreement “that promotes the safe and timely transfer of children” while maintaining child safeguards for vetting sponsors. See DHS, Office of Public Affairs, “HHS and DHS Joint Statement on Termination of 2018 Agreement,” press release, March 12, 2021.

<sup>168</sup> HHS, “HHS Issues Statement on Ms. L, et al., Status Report Regarding Plan for Compliance for Remaining Class Members,” press release, July 13, 2018. This figure was also reported in several news reports including Dan Diamond, “HHS says hundreds more migrant kids may have been separated than earlier count,” *Politico*, July 5, 2018; and Caitlin Dickerson, “Trump Administration in Chaotic Scramble to Reunify Migrant Families,” *New York Times*, July 5, 2018.

<sup>169</sup> Prior Administrations prosecuted illegal border crossings relatively infrequently. When they did engage in concerted efforts to crack down on this activity, they generally did not prosecute asylum seekers or families. Prior Administrations also separated arriving migrant parents from their accompanying children (and treated the minors as (continued...))



Criminally prosecuting adults (regardless of nationality) makes them subject to detention in federal criminal adult detention facilities. Under the zero tolerance policy, when a parent entered the United States illegally with a minor and was detained in criminal detention, DHS classified the child as an unaccompanied alien child and transferred the child to ORR custody. Once the parent's criminal prosecution for illegal entry or reentry ended and any sentence was served, the parent and child could be reunited.

Following mostly critical public reaction, President Trump issued an executive order on June 20, 2018, mandating that DHS maintain custody of alien families during the pendency of any criminal trial or immigration proceedings.<sup>170</sup> CBP subsequently stopped referring most illegal border crossers to DOJ for criminal prosecution. ICE continued, family detention space permitting, to detain family units for up to 20 days. A federal judge then issued an injunction prohibiting family separation and requiring that all separated children be promptly reunited with their families.<sup>171</sup>

Reuniting families presented a considerable challenge to ORR, CBP, and ICE. Immigrant advocates criticized the Trump Administration's efforts at family reunification for what some described as an uncoordinated implementation process that lacked an effective plan to reunify separated families.<sup>172</sup> Reports subsequently issued by the OIG for both DHS and HHS indicated that CBP had omitted information about the separated children's family members after classifying them as UAC and referring them to ORR, and described limitations with its information technology system for tracking such children.<sup>173</sup> The resulting delay in reunifying families meant that two to three thousand additional children spent an indeterminate amount of additional time in ORR shelters.<sup>174</sup>

In the period since the zero tolerance policy was paused in June 2018 until November 30, 2020 at least 1,000 additional children were separated, bringing the total reported number of separated children to between 5,300 and 5,500.<sup>175</sup>

## Regulations to Replace the *Flores Settlement Agreement*

On September 7, 2018, DHS and HHS jointly published proposed regulations on the apprehension, processing, care, and custody of alien children that would have replaced the *Flores*

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unaccompanied children) in more limited circumstances, specifically where the agency had concerns about the legitimacy of the family relationship or the safety of the child. Ibid.

<sup>170</sup> Executive Order 13841, *Affording Congress an Opportunity to Address Family Separation*, 83 *Federal Register* 29435, June 25, 2018.

<sup>171</sup> See *Ms. L v. ICE*, case 3:18-cv-00428-DMS-MDD, Document 83, (S.D. Cal. June 26, 2018).

<sup>172</sup> See, for example, Kevin Sieff, "The chaotic effort to reunite immigrant parents with their separated kids," *Washington Post*, June 21, 2018; and Jonathan Blitzer, "The Government has no plan for reuniting the immigrant families it is tearing apart," *New Yorker*, June 18, 2018.

<sup>173</sup> DHS, Office of Inspector General, "Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy," OIG-18-84, September 27, 2018; and HHS, Office of Inspector General, "Separated Children Placed in Office of Refugee Resettlement Care," HHS-OIG Issue Brief, OEI-BL-18-00511, January 2019.

<sup>174</sup> See Ian Lovett and Louise Radnofsky, "Amid Chaos at Border, Some Immigrant Families Reunite," *Wall Street Journal*, June 24, 2018; Ritu Prasad, "Undocumented migrant families embark on chaotic reunion process," *BBC*, June 25, 2018; Kaitlyn Schallhorn, "What Trump's 'zero-tolerance' immigration policy means for children separated from families at border," *Fox News*, June 19, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

<sup>175</sup> For more information, see CRS Report R45266, *The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy*. For a recent update, see Piper French, "Left Apart At least 5,000 families were forcibly separated during the Trump administration. The work of reunifying them is painfully incomplete," *New York Magazine*, February 27, 2024.

*Agreement*.<sup>176</sup> The proposed regulations mainly addressed detention for children within family units but also contain some provisions affecting unaccompanied children. While adhering to the basic purpose of the *Flores Agreement* “in ensuring that all juveniles in the government’s custody are treated with dignity, respect, and special concern for their particular vulnerability as minors,” the rule would have amended current licensing requirements for family residential centers to allow families to be detained together during the full length of their immigration proceedings. The rule would thereby have allowed ICE to overcome the 20-day immigration detention restriction for families that was imposed as part of the *Flores Agreement*. The final rule was published on August 23, 2019.<sup>177</sup>

Opponents of the rule criticized it for potentially allowing children to be indefinitely detained with their parents in unsafe and inappropriate conditions.<sup>178</sup> Supporters contended that, in its current form, the *Flores Agreement* incentivized unlawful migration to the United States and the filing of meritless asylum claims.<sup>179</sup> Soon after the rule was issued, the federal judge overseeing the *Flores Agreement* permanently enjoined it.<sup>180</sup>

## Mexican Immigration Policies

At the end of the Trump Administration, the Mexican government enacted policies affecting the flows of unaccompanied children migrating to the United States. Prior to that, many non-Mexican unaccompanied children traveling through Mexico and apprehended by Mexican officials were detained in Mexican migrant detention centers, which some migrants’ rights advocates characterize as *de facto* incarceration.<sup>181</sup> In 2019, for example, the Mexican government reportedly detained more than 50,000 children, largely from Honduras and Guatemala.<sup>182</sup> Many such children were subsequently returned from Mexico to their home countries.<sup>183</sup>

In November 2020, the Mexican government passed a law limiting the extent to which minor children from other countries, accompanied or unaccompanied, could be detained in Mexico.<sup>184</sup> In addition, the law required that such children be referred to a Mexican government bureau for children and adolescents for case-by-case processing, which could include referrals to public service agencies, family reunification, or returning the children to their origin countries.

Reportedly, only a fraction of unaccompanied children were processed according to the new law, in part because the Mexican public service agencies assigned to assist unaccompanied children suffered budget cuts. Of the 98,671 children detained by Mexican immigration authorities

<sup>176</sup> DHS and HHS, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” 83 *Federal Register* 45486-45534, September 7, 2018.

<sup>177</sup> DHS and HHS, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” 84 *Federal Register* 44392-44535, August 23, 2019.

<sup>178</sup> See, for example, Philip Wolgin, “The High Costs of the Proposed Flores Regulation,” Center for American Progress, October 19, 2018.

<sup>179</sup> See, for example, Matthew Sussis, “The History of the Flores Settlement: How a 1997 agreement cracked open our detention laws,” Center for Immigration Studies, February 11, 2019.

<sup>180</sup> See *Flores v. Barr*, case 2:85-cv-04544-DMG-AGR, Document 690, (C.D. Cal. September 27, 2019).

<sup>181</sup> Sergio Ortiz Borbolla, “Migrant Children and Adolescents Are at Risk as Mexico and the United States Fail to Provide Protections,” Washington Office on Latin America (WOLA), April 13, 2023.

<sup>182</sup> Christopher Sherman, “Mexico to stop holding child migrants in detention centers,” *APNews*, November 12, 2020.

<sup>183</sup> Amnesty International, *Pushed into Harm’s Way: Forced Returns of Unaccompanied Migrant Children to Danger by the USA and Mexico*, June 2021.

<sup>184</sup> For more information, see *Implementation of the Mexican Legal Reforms that Prohibit Detention of Accompanied and Unaccompanied Migrant Children*, Institute for Women in Migration, March 2021.

between January 2021 and May 2022, 19,067 (19%) received processing according to the new rule, and more than half of this latter group was later deported to their home countries.<sup>185</sup>

Despite these legal changes, observers noted the salient role of the Mexican government in reducing U.S.-bound migration by restricting and repatriating Northern Triangle migrants including unaccompanied minors.<sup>186</sup>

## Biden Administration

Soon after taking office, the Biden Administration stopped expelling unaccompanied children under Title 42.<sup>187</sup> That action and other circumstances may have contributed to the relatively high number of unaccompanied children arriving at the Southwest border.<sup>188</sup>

## ORR Shelter Capacity

The Biden Administration initially was confronted with inadequate ORR shelter capacity to meet the demand it faced. The reduced ORR housing capacity stemmed from both the declines in UAC referrals to the agency during FY2020, and CDC's public health protocols enacted in response to the COVID-19 pandemic. Because of sharply diminished numbers of UAC referrals in FY2020, some shelters either reduced capacity or did not renew their contracts with ORR upon expiration. In addition, the CDC protocols on COVID-19 required ORR shelters that were operating to reduce the number of children housed in order to comply with its social distancing guidelines.<sup>189</sup> As a result, a fewer number of conventional shelters were operating at significantly reduced capacity at the start of FY2021—less than half the capacity required to accommodate demand for shelter space—hampering ORR's ability to respond to the UAC surge.<sup>190</sup>

In response, CBP rapidly expanded its temporary housing capacity to accommodate arriving children, attracting considerable media attention and criticism from child welfare advocates.<sup>191</sup>

<sup>185</sup> Sergio Ortiz Borbolla, "Migrant Children and Adolescents Are at Risk as Mexico and the United States Fail to Provide Protections," Washington Office on Latin America (WOLA), April 13, 2023.

<sup>186</sup> See, for example, Julia Ainsley and Chloe Atkins, "Mexico is stopping nearly three times as many migrants now, helping keep U.S. border crossings down," *NBC News*, May 15, 2024; and Adam Isacson, "Why Is Migration Declining at the U.S.-Mexico Border in Early 2024?," Washington Office on Latin America (WOLA), April 18, 2024. For more information on Mexico's role in U.S. immigration enforcement more generally, see CRS In Focus IF10215, *Mexico's Immigration Control Efforts*.

<sup>187</sup> CDC, "Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination," 86 *Federal Register* 9942, February 17, 2021.

<sup>188</sup> See for example Nick Miroff and Maria Sacchetti, "Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent," *Washington Post*, March 22, 2021; and Michael D. Shear, Zolan Kanno-Youngs and Eileen Sullivan, "Young Migrants Crowd Shelters, Posing Test for Biden," *New York Times*, June 14, 2021.

<sup>189</sup> Centers for Disease Control and Prevention, *COVID-19 Infection Control Inventory and Planning (ICIP) Tool for Homeless Service Providers*, June 11, 2020. A review of ORR's protocols at its shelters indicated that they were generally prepared to respond to the COVID-19 pandemic. See HHS, Office of the Inspector General, *Office of Refugee Resettlement Ensured That Selected Care Providers Were Prepared To Respond to the COVID-19 Pandemic*, Report No. A-04-20-02031, November 2020.

<sup>190</sup> See, for example, Mark Greenberg, "Hampered by the Pandemic: Unaccompanied Child Arrivals Increase as Earlier Preparedness Shortfalls Limit the Response," Migration Policy Institute, March 2021.

<sup>191</sup> See, for example, Rosa Flores, Sara Weisfeldt and Catherine E. Shoichet, "Kids detained in overcrowded border facility are terrified, crying and worried, lawyers say," *CNN*, March 13, 2021; Zolan Kanno-Youngs and Michael D. Shear, "Biden Faces Challenge From Surge of Migrants at the Border," *New York Times*, March 8, 2021; and Hilary Andersson and Anne Laurant, "Children tell of neglect, filth and fear in US asylum camps, BBC, May 23, 2021. CBP (continued...)



CBP operates Border Patrol stations as well as centralized processing centers that are intended to house migrants of all ages for only a few hours and a few days, respectively.<sup>192</sup> At one point in March 2021, CBP was housing almost 5,800 unaccompanied children in its own facilities,<sup>193</sup> including more than 4,100 children at a Donna, Texas facility intended for 250.<sup>194</sup> More than 2,000 of these children had been held in CBP custody for more than 72 hours, and 39 children had been held for more than two weeks.<sup>195</sup>

In March 2021, CDC directed ORR to relax its COVID-19 related restrictions and accommodate unaccompanied children in its shelters at 100% capacity, despite potential health risks.<sup>196</sup> CDC justified rescinding the COVID-19 guidelines at ORR shelters as preferable to having children experience prolonged stays in CBP facilities.<sup>197</sup> Reportedly, many conventional shelters faced challenges hiring staff, because applicants were wary of working in congregate settings.<sup>198</sup> While some unaccompanied children in ORR custody were vaccinated,<sup>199</sup> vaccination of others was complicated at the time by the lack of a COVID-19 vaccine for children under age 12.<sup>200</sup>

In addition, the Biden Administration opened new as well as previously closed Influx Care Facilities or Emergency Intake Sites. In March 2021, ORR reportedly required 20,000 beds to keep pace with the influx of unaccompanied children. It used the temporary facilities for older children in order to reserve space in smaller, state-licensed conventional shelters for “tender age” children under age 13.<sup>201</sup> At the end of June 2021, unaccompanied children were spending between 30 and 40 days in ORR custody.<sup>202</sup> At one point during FY2021, ORR oversaw 14

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faced similar criticisms during earlier surges. See, for example, Dara Lind, “The horrifying conditions facing kids in border detention, explained,” *Vox*, June 25, 2019.

<sup>192</sup> For more information on CBP and ORR shelter types, see Danilo Zak, *Explainer: Emergency Shelters and Facilities Housing Unaccompanied Children*, National Immigration Forum, updated June 25, 2021.

<sup>193</sup> Mark Greenberg, “U.S. Government Makes significant Strides in Receiving Unaccompanied Children but Major Challenges Remain,” Migration Policy Institute, May 2021.

<sup>194</sup> Elliot Spagat and Nomaan Merchant, “Over 4,000 migrants, many kids, crowded into Texas facility,” *APNews*, March 31, 2021.

<sup>195</sup> *Ibid.* By the end of April 2021, the number of unaccompanied children in CBP facilities had dropped below 1,000. See Erin Coulehan, “Report: Number of unaccompanied migrant children at CBP facilities drops, daily apprehensions persist,” *Border Report*, April 30, 2021. See also U.S. Customs and Border Protection, “CBP Announces June 2021 Operational Update,” press release, July 16, 2021.

<sup>196</sup> Stef W. Kight, “CDC lets child migrant shelters fill to 100% despite COVID concern,” *Axios*, March 5, 2021.

<sup>197</sup> Priscilla Alvarez, “Biden administration tells facilities for migrant children to reopen to pre-pandemic levels,” *CNN*, March 5, 2021.

<sup>198</sup> Eileen Sullivan, Zolan Kanno-Youngs and Luke Broadwater, “Overcrowded Border Jails Give Way to Packed Migrant Child Shelters,” *New York Times*, May 10, 2021; and Dara Lind, “‘No Good Choices’: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021.

<sup>199</sup> Nathaniel Weixel, “Biden administration vaccinating migrant children against COVID-19,” *The Hill*, June 9, 2021.

<sup>200</sup> HHS, Administration for Children and Families, *Field Guidance #17 – COVID-19 Vaccination of Unaccompanied Children (UC) in ORR Care*, June 10, 2021.

<sup>201</sup> Nick Miroff, Andrew Ba Tran, and Leslie Shapiro, “Hundreds of minors are crossing the border each day without their parents. Who are they?,” *Washington Post*, March 11, 2021.

<sup>202</sup> HHS, “Latest UC Data – FY2021,” June 24, 2021.

Emergency Intake Sites<sup>203</sup> and one Influx Care Facility,<sup>204</sup> which together had the capacity to house roughly 25,000 children. However, many were closed by the end of FY2021.

Concerns have been raised by some about the relatively high costs for these temporary shelters, the lack of child welfare experience of the facility contracting organizations, the absence of a bidding process for some contracts, and Biden Administration links with enterprises that were awarded contracts.<sup>205</sup>

Child advocacy groups have expressed additional concerns about temporary facilities' large sizes, lack of state licensing standards and oversight, remote locations, and reported understaffing.<sup>206</sup> Media reports indicate that ORR may not be holding these facilities to the same standards as its conventional shelters.<sup>207</sup> ORR has countered that these facilities are necessary in periods of sudden and unusually high caseloads.<sup>208</sup>

Among temporary facilities, the Fort Bliss EIS drew considerable attention.<sup>209</sup> In July 2021, for example, two federal workers who were detailed to the facility filed a whistleblower complaint to Congress and HHS alleging that the employees of the private contractor running the facility had no child welfare experience, no Spanish language skills, and no relevant prior training.<sup>210</sup> While not alleging illegal activity, the complaint described what it characterized as gross mismanagement and a threat to public health and safety.<sup>211</sup> Other temporary facilities also faced

<sup>203</sup> The names and states of the 14 facilities were: Midland, TX; Fort Bliss, TX; Pecos, TX; Donna TX (Delphi); Carrizo Springs, TX (Dimmit); San Diego Convention Center (CA); Long Beach Convention Center (CA); Pomona Fairplex (CA); Starr Commonwealth (MI); Lackland Air Force Base (TX); Kay Bailey Hutchinson Convention Center (TX); Freeman Expo Center (TX); National Association of Christian Churches (TX); and Pennsylvania International Academy (PA).

<sup>204</sup> Carrizo Springs, TX.

<sup>205</sup> Adriana Gomez Licon, "US awards huge shelter contracts amid child migrant increase," *AP News*, May 5, 2021; and Lachlan Markey and Stef W. Kight, "Exclusive: Texas nonprofit got massive border contract after hiring Biden official," *Axios*, April 14, 2021.

<sup>206</sup> Child welfare advocates consider conventional state-licensed shelters preferable to temporary facilities. See, for example, Letter from Pramila Jayapal, United States Representative, to Xavier Becerra, Secretary, Department of Health and Human Services, Alejandro Mayorkas, Secretary, Department of Homeland Security; Cindy Huang, Director, Office of Refugee Resettlement; and Troy Miller, Senior Official Performing the Duties of the Commissioner, Customs and Border Protection, April 13, 2021; and United States Representative Rosa DeLauro, "DeLauro Urges the Biden Administration to Redesign the Unaccompanied Children Program and Limit Use of Influx Facilities," Press Release, February 10, 2021.

<sup>207</sup> See, for example, Roxanne Van Ruiten, "Anxiety, depression rampant at HHS migrant children's shelter at Fort Bliss, former workers say," *CBS-3 WRBL*, June 4, 2021; and Dara Lind, "'No Good Choices': HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities," *ProPublica*, April 1, 2021.

<sup>208</sup> U.S. Health and Human Services, "Carrizo Springs Influx Care Facility," Press Release, June 21, 2021.

<sup>209</sup> See, for example, Stephanie Shields, "Immigration advocacy groups protest migrant facility for children at Fort Bliss," *Border Report*, June 9, 2021; and Roxanne Van Ruiten, "Anxiety, depression rampant at HHS migrant children's shelter at Fort Bliss, former workers say," *CBS*, June 4, 2021.

<sup>210</sup> Government Accountability Project, "Protected Whistleblower Disclosures of Gross Mismanagement by the Department of Health and Human Services at Fort Bliss, Texas Causing Specific Dangers to Public Health and Safety," Letter to the U.S. House of Representatives, Committees on Energy and Commerce, and Oversight and Reform, and to the U.S. Senate, Committees on Health, Education, Labor and Pensions, and Homeland Security and Government Affairs, and to the HHS Office of the Inspector General, July 7, 2021. HHS's inspector general announced an investigation into the facility. See Priscilla Alvarez, "Government watchdog launches review into troubled Fort Bliss facility for migrant children," *CNN*, August 2, 2021.

<sup>211</sup> For more information, see HHS, Office of the Inspector General, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children*, OEI-07-21, September 27, 2022.

allegations of mismanagement and possessing conditions considered unsuitable for children.<sup>212</sup> The number of unaccompanied children at Fort Bliss, which peaked at 4,800 in May 2021 (the highest recorded number for any ORR facility), declined to under 800 in July 2021.<sup>213</sup> In September 2023, ORR began phasing out the facility and has since shuttered it.<sup>214</sup>

In June 2022, the Biden Administration agreed to new housing standards that would require ORR to follow minimum standards of care for children if they employ emergency intake sites in the future. Judge Dolly Gee, who oversees the *Flores Agreement*, approved the new agreement in September 2022.<sup>215</sup> As of June 2024, ORR was not sheltering children at emergency intake sites or influx care facilities. Four facilities remain available to the agency and can resume operations within weeks, if needed.<sup>216</sup>

## Other Actions to Address the UAC Surge

The Biden Administration took other steps in 2021 in response to the surge of unaccompanied children. As noted, it terminated the 2018 ICE-ORR information-sharing agreement that some contend discouraged UAC sponsorship.<sup>217</sup> It made disaster aid funding available to border communities for migrant-related assistance<sup>218</sup> and redirected USBP agents from the northern to the southern border.<sup>219</sup> To expedite family reunification and ease housing pressure on its shelter network, ORR temporarily waived background check requirements for household members living with prospective sponsors<sup>220</sup> and authorized its shelter operators to pay for some children's transportation costs.<sup>221</sup> In 2021, the Biden Administration reactivated and expanded eligibility for the CAM Program that the Trump Administration had terminated.<sup>222</sup>

<sup>212</sup> See, for example, Eileen Sullivan, "For Migrant Children in Federal Care, a 'Sense of Desperation'," *New York Times*, June 24, 2021; and Dara Lind, "'No Good Choices': HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities," *ProPublica*, April 1, 2021.

<sup>213</sup> Lauren Giella, "Fort Bliss Shelter for Unaccompanied Minors Sees 40% Drop in Children Housed There," *Newsweek*, June 29, 2021.

<sup>214</sup> ORR, "ORR Influx Care Facilities for Unaccompanied Children," fact sheet, June 14, 2024.

<sup>215</sup> See *Flores v. Garland*, case 2:85-cv-04544-DMG-AGR, Document 1288, (C.D. Cal. September 23, 2022).

<sup>216</sup> The facilities include Pecos TX, Dimmit County Children's Center TX, Greensboro Children's Center NC, and Fort Bliss TX. See HHS, Administration for Children and Families, "ORR Influx Care Facilities for Unaccompanied Children: Fact Sheet," June 14, 2024.

<sup>217</sup> See, for example, Mark Greenberg, "U.S. Government Makes Significant Strides in Receiving Unaccompanied Children but Major Challenges Remain," Migration Policy Institute, May 2021.

<sup>218</sup> Federal Emergency Management Agency (FEMA), "FEMA Awards \$110 Million to the Emergency Food and Shelter Program to Assist Migrants," Press Release, March 18, 2021.

<sup>219</sup> Zolan Kanno-Youngs and Michael D. Shear, "Biden Faces Challenge From Surge of Migrants at the Border," *New York Times*, March 8, 2021.

<sup>220</sup> HHS, Administration for Children and Families, *ORR Field Guidance #11, Temporary Waivers of Background Check Requirements for Category 2 Adult Household Members and Adult Caregivers*, March 31, 2021. For a critical view of this policy, see Andrew R. Arthur, "Reports Suggest HHS Is Cutting Corners in Vetting Sponsors of Migrant Children," Center for Migration Studies, May 6, 2021.

<sup>221</sup> Typically, ORR policy requires approved sponsors to pay for such costs, in some cases before children can be released to them. Nomaan Merchant, "Amid surge, US tries to expedite release of migrant children," *AP News*, February 24, 2021.

<sup>222</sup> For more information, see USCIS, "Central American Minors (CAM) Program," updated March 7, 2024. For a critical view of the CAM program, see Nayla Rush, "CAM and PTA: Opening the Back Door: The likely revival and expansion of the programs for Central Americans," Center for Immigration Studies, January 21, 2021; and Nayla Rush, "The Biden Administration Expands Access to CAM: Eligibility to petition for children to join is no longer limited to lawfully present parents," Center for Immigration Studies, June 15, 2021.

The Biden Administration also expanded government agency coordination in response to the UAC surge. It directed FEMA to assist with UAC processing and to help relieve the number of children held in CBP facilities.<sup>223</sup> CBP established an interagency Movement Coordination Cell that streamlines federal operations to expedite the transfer of unaccompanied children from DHS to ORR custody.<sup>224</sup> The Biden Administration recruited volunteers among federal agencies to serve four-month details helping ORR process unaccompanied children.<sup>225</sup> CBP also hired teams of social service workers to handle non-enforcement tasks related to UAC processing.<sup>226</sup>

## New Regulations to Replace the *Flores Settlement Agreement*

On April 23, 2024, HHS issued a final rule implementing the *Flores Agreement* and formalizing existing and new UAC policies in regulation.<sup>227</sup> The rule, effective July 1, 2024, incorporates provisions of the *Flores Agreement* as well as several policy changes. The latter, among other provisions, include the following:

- creating a new ombuds office allowing children to raise concerns about policies and practices;
- funding legal service providers to offer legal advice and representation to children if pro bono attorneys are unavailable;
- ensuring that all temporary emergency and influx facilities provide minimum levels of services (as required for standard care facilities); and
- revising the *influx* definition<sup>228</sup> that triggers the use of temporary influx facilities.

The rule also details placement criteria for different care provider facility types; finalizes policies and procedures regarding the safe and timely release of unaccompanied children to vetted sponsors; and bolsters children’s privacy rights.

Some lawmakers have objected to this rule because it would codify in regulation the existing vetting procedures that they consider insufficient to prevent labor and sex trafficking of children.<sup>229</sup> Others have raised concerns that it provides inadequate protection and oversight by

<sup>223</sup> According to DHS, “FEMA is now integrated and co-located with HHS to look at every available option to quickly expand physical capacity for appropriate lodging. The workforce of DHS, including CBP, the Federal Protective Service, U.S. Immigration and Customs Enforcement, and volunteers from across the Department through the DHS Volunteer Force, will help to provide shelter capacity, security, and other support as needed.” DHS, “Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children,” Press Release, March 13, 2021. See also DHS Office of Inspector General, *FEMA Successfully Assisted HHS in Providing Shelter and Supplies to Unaccompanied Children from the Southwest Border*, OIG-22-35, March 31, 2022.

<sup>224</sup> Testimony of Benjamin “Carry” Huffman, CBP Executive Assistant Commissioner, Enterprise Services, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, 117<sup>th</sup> Cong., 1<sup>st</sup> sess., June 10, 2021.

<sup>225</sup> During the 2019 surge of family units at the Southwest border, the Trump Administration also solicited volunteers to assist DHS. See Eric Katz, “Biden Asks Feds Across Government to Volunteer to Assist at the Border,” *Government Executive*, March 26, 2021.

<sup>226</sup> See, for example, John Burnett, “The Border Patrol’s New Migrant Child Care Cadre,” *NPR*, April 6, 2021.

<sup>227</sup> HHS, Administration for Children and Families, “Unaccompanied Children Program Foundation Rule,” 89 *Federal Register* 34384-34617, April 30, 2024 (hereinafter referred to as “2024 UAC Final Rule.”)

<sup>228</sup> The *Flores Agreement* defined an “influx” as the point “where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program . . . , including those who have been so placed or are awaiting such placement.” The new rule defines an influx as the point when the number of unaccompanied children in ORR custody exceeds 85% of its shelter capacity.

<sup>229</sup> See, for example, Letter from Sen. Bill Cassidy to Xavier Becerra, Secretary, HHS, February 13, 2024; and Sen. (continued...)

allowing unlicensed shelters in certain circumstances.<sup>230</sup> Other opponents of the rule contend that ending the current court supervision of the *Flores Agreement* for children in ORR custody would reduce third-party oversight by advocacy organizations who can currently visit sites unimpeded, talk with children, and demand through court motions any needed compliance with *Flores Agreement*.<sup>231</sup>

Another concern centers on Texas and Florida, two states with large numbers of UAC shelters. In 2021, in response to the Biden Administration's policies, Texas Governor Greg Abbott issued a proclamation, and Florida's Department of Children and Families (DCF) enacted an emergency rule, that stopped licensing or relicensing of UAC shelters and discontinued related oversight.<sup>232</sup> In 2022, the Biden Administration asserted that state licenses were not required for shelter operators to continue receiving federal funding, and that states could not punish operators for continuing to provide shelter and services.<sup>233</sup> However, without the standards imposed through state licensing, child advocates are concerned that shelter conditions in those two states could worsen at the same time that the new rule limits opportunities for oversight.<sup>234</sup>

## Assessing the Recent UAC Surge

Observers early in the Biden Administration attributed the UAC surge, and the substantial increase in migrants to the Southwest border more generally, to a so-called "Biden Effect" stemming from a perception of the Administration's less restrictive immigration enforcement policies relative to those of the Trump Administration. They contended such policies signaled to migrants a window of opportunity to enter and reside in the United States.<sup>235</sup>

Some suggested that the Biden Administration's exempting unaccompanied children from Title 42 while continuing its use for some family units might have inadvertently increased UAC

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Chuck Grassley, "Grassley Moves To Overturn Biden Admin Rule Enabling Abuse Of Unaccompanied Migrant Children," news release, June 5, 2024.

<sup>230</sup> "KIND Statement on Office of Refugee Resettlement's Final Unaccompanied Children Program Foundational Rule to Codify Flores Settlement Agreement," Kids in Need of Defense (KIND), April 25, 2024.

<sup>231</sup> Gianna Borroto, "Government's Move to Terminate Flores Agreement Could Leave Immigrant Children Unprotected," *Immigration Impact*, American Immigration Council, May 22, 2024.

<sup>232</sup> Governor Greg Abbott, *A proclamation certifying that the ongoing surge of individuals unlawfully crossing the Texas-Mexico border poses an ongoing and imminent threat of widespread and severe damage, injury, and loss of life and property, including property damage, property crime, human trafficking, violent crime, threats to public health, and a violation of sovereignty and territorial integrity, in certain Texas counties and for all state agencies affected by this disaster*, May 31, 2021; and Letter from Ryan Newman, General Counsel, Office of the Governor, State of Florida, to Mark Greenberg, Deputy General Counsel, HHS, January 26, 2022, [https://www.scribd.com/document/556474871/DeSantis-Letter-to-HHS#download&from\\_embed](https://www.scribd.com/document/556474871/DeSantis-Letter-to-HHS#download&from_embed).

<sup>233</sup> "Feds say state licenses not needed for migrant children shelters to stay open," *Tampa Bay Times*, February 24, 2022.

<sup>234</sup> Rebecca Santana and Acacia Coronado, "The Flores agreement has protected migrant children for nearly 3 decades. Changes may be coming," *AP News*, May 11, 2024.

<sup>235</sup> See, for example, Ken Cuccinelli, "Biden in Denial As Border Crisis Escalates Due to His Rhetoric and Immigration Policies," *Immigration Commentary*, The Heritage Foundation, March 17, 2021 and Mark Krikorian, "The Biden Effect Continues at the Border," *National Review*, February 26, 2021. For an alternative interpretation, see Jorge Ramos, "More Immigrants Will Come to the U.S. Under President Biden. That's a Good Thing," *New York Times*, January 8, 2021. For two assessments of causes for the surge of unaccompanied children at the start of the Biden Administration, see Brandon Mulder, "Fact-check: Is the surge of migrant children arriving at border a result of Biden policies?," *Austin American-Statesman*, March 29, 2021; and Linda Qiu, "Fact-Checking Claims on the Migrant Surge at the U.S.-Mexico Border," *New York Times*, March 20, 2021. See also Nick Miroff and Maria Sacchetti, "Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent," *Washington Post*, March 22, 2021.



apprehensions by prompting some parents to “self-separate” from their minor children who could then migrate to the U.S. border and seek asylum as unaccompanied children.<sup>236</sup> Critics of the Biden Administration’s response to the UAC surge characterize some of its policies toward unaccompanied children—particularly the CAM program and ORR covering airfare expenses to reunite some unaccompanied children with their sponsors—as effectively completing the smuggling loop initiated by children’s parents.<sup>237</sup>

Other observers countered that the UAC surge resulted from pent-up demand for asylum by migrants living under precarious conditions in Mexico because of previous migrant processing policies imposed by the Trump Administration. These included the use of Title 42 and the Migrant Protection Protocols which required migrants with pending asylum claims to remain in Mexico while their cases progressed through the U.S. immigration court system.<sup>238</sup> They also pointed to an unusual confluence of push factors, particularly two hurricanes and the COVID-19 pandemic, that exacerbated already challenging conditions in migrant source countries.<sup>239</sup>

## Policy Observations

### Post-Release Services

To prevent potential abuse and harm to unaccompanied children after they are placed with sponsors, as well as to support families and avoid foster care and other less desired outcomes, ORR established procedures to provide children and sponsors with post-release services (PRS).<sup>240</sup> Services are provided by nonprofit community-based organizations and are calibrated according to circumstances. Children and sponsors with risk factors for child abuse (e.g., criminal background, history of perpetrating domestic violence) are more likely to receive PRS than those without such risk factors.<sup>241</sup>

PRS are intended to protect children by linking them with legal and social services professionals who can assist them and refer them to support services and resources, from enrolling in school to receiving mental health services. For children seeking asylum, post-release legal services can

<sup>236</sup> See, for example, David J. Bier, “Did US Policy Cause Half of ‘Unaccompanied’ Children to Separate From Parents?”, Cato Institute, April 14, 2021.

<sup>237</sup> See, for example, Jessica M. Vaughan and Tara Lee Rodas, “Unaccompanied and Unsafe: Biden Policies Facilitate Exploitation and Abuse of Child Migrants,” *Parsing Immigration Policy*, Episode 126, Center for Immigration Studies, October 12, 2023; Robert Law, “Reuters Exposes Parents’ Complicity in UAC Smuggling Scheme,” Center for Immigration Studies, March 27, 2021; and Mark Krikorian and Nayla Rush, “Don’t Come to the U.S. Illegally – We’ll Come Get You!,” *Parsing Immigration Policy*, Episode 14, Center for Immigration Studies, July 29, 2021.

<sup>238</sup> See Michelle Hackman and Alicia A. Caldwell, “Biden’s Immigration Plan for Surge of Migrants at U.S. Southern Border: What You Need to Know,” *Wall Street Journal*, May 12, 2021 and Muzaffar Chishti and Sarah Pierce, Border Déjà Vu: Biden Confronts Similar Challenges as His Predecessors,” *Policy Beat*, Migration Policy Institute, April 1, 2021. For more information, see CRS Report R46999, *Immigration: Apprehensions and Expulsions at the Southwest Border*; and CRS Legal Sidebar LSB10251, “*Migrant Protection Protocols*”: *Legal Issues Related to DHS’s Plan to Require Arriving Asylum Seekers to Wait in Mexico*.

<sup>239</sup> Linda Qiu, “Fact-Checking Claims on the Migrant Surge at the U.S.-Mexico Border,” *New York Times*, March 20, 2021.

<sup>240</sup> These procedures are broadly established in statute which states: “The Secretary of Health and Human Services shall conduct follow-up services, during the pendency of removal proceedings, on children for whom a home study was conducted and is authorized to conduct follow-up services in cases involving children with mental health or other needs who could benefit from ongoing assistance from a social welfare agency.” 8 U.S.C. §1232(c)(3)(B).

<sup>241</sup> For more information, see CRS Congressional Distribution Memorandum, *Post-Release Services for Unaccompanied Alien Children: Legal and Policy Analysis*, June 1, 2023, available to Members of Congress and their staff upon request.

provide children with critical information about their legal rights and responsibilities and help them evaluate their eligibility for humanitarian protection.

**Figure 2** illustrates that the absolute number of UAC apprehensions increased substantially over the past decade. Over the same time, the UAC composition transformed from primarily Mexican children, who can largely be repatriated, to non-Mexican children, who must be referred to ORR. Both trends have led to increased demand for PRS.

Data in **Table 1** indicate that the proportion of UAC sponsors receiving pre-placement home studies remained relatively small and stable (5% to 12%) over the period for which data are available. The proportion of UAC-sponsoring households receiving post-release service hovered between 20% and 44% over this period, except for FY2020, when the pandemic reduced the UAC flow to the border and allowed ORR to provide services to a much larger percentage of placed children. ORR maintains that it is currently on track, conditional on funding, to providing all children with an expanded level of PRS by the end of FY2024.<sup>242</sup>

Providing effective post-release services involves several challenges. ORR is limited by budgetary and/or personnel constraints that become more apparent during surges of childhood arrivals at the Southwest border, when the agency must decide how to most effectively utilize its resources.<sup>243</sup> Under such conditions, ORR may not be able to provide the same level of sponsor vetting and post-release services compared to periods when child migrant flows and agency resources are more evenly matched.<sup>244</sup>

**Table 1. UAC Apprehensions, Referrals to Sponsors, Home Studies, Placements, and Receipt of Post-Release Services (PRS)**  
(FY2009-FY2023)

Fiscal Year	UAC Apprehended by CBP	Apprehended UAC Referred to ORR	% of Apprehended UAC Referred to ORR	UAC Sponsors Receiving ORR Home Studies	% of UAC Sponsors Receiving ORR Home Studies	UAC Placed with Sponsors	Placed UAC Receiving PRS	% of Placed UAC Receiving PRS
2009	19,668	6,639	34%	N/A	N/A	N/A	N/A	N/A

<sup>242</sup> HHS, Administration for Children and Families, *Fiscal Year 2025, Justification of Estimates for Appropriations Committee*, p. 77.

<sup>243</sup> For example, in early 2021, as UAC apprehensions and referrals surged to record-high levels, ORR issued field guidance memoranda which expedited releases of children who were not considered especially vulnerable, whose sponsors were not subject to mandatory TVPRA home studies, and whose cases otherwise contained no indications of potential abuse or neglect. See ACF, ORR, *Field Guidance #10, Expedited Release for Eligible Category 1 Cases*, March 22, 2021; and *Field Guidance #11, Temporary Waivers of Background Check Requirements for Category 2 Adult Household Members and Adult Caregivers*, March 31, 2021.

<sup>244</sup> Problems sometimes associated with post-placement policies may have their origins with preplacement policies and procedures such as the vetting of sponsors and ORR's information systems for tracking children. For recent critical assessments of these ORR practices, see HHS Office of the Inspector General, *Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children*, OEI-07-21-00250, February 2024; HHS Office of the Inspector General, *The Office of Refugee Resettlement Needs to Improve Its Oversight Related to the Placement and Transfer of Unaccompanied Children*, A-06-20-07002, May 2023; Statement of Jessica M. Vaughan, Center for Immigration Studies, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Integrity, Security, and Enforcement, *The Biden Border Crisis: Exploitation of Unaccompanied Alien Children*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., April 26, 2023; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse*, Minority Staff Report, December 2022.

Fiscal Year	UAC Apprehended by CBP	Apprehended UAC Referred to ORR	% of Apprehended UAC Referred to ORR	UAC Sponsors Receiving ORR Home Studies	% of UAC Sponsors Receiving ORR Home Studies	UAC Placed with Sponsors	Placed UAC Receiving PRS	% of Placed UAC Receiving PRS
2010	18,634	8,302	45%	N/A	N/A	N/A	N/A	N/A
2011	16,067	7,120	44%	N/A	N/A	N/A	N/A	N/A
2012	24,481	13,625	56%	N/A	N/A	8,869	N/A	N/A
2013	38,759	24,668	64%	N/A	N/A	20,196	N/A	N/A
2014	68,541	57,496	84%	N/A	N/A	53,515	N/A	N/A
2015	39,970	33,726	84%	1,895	6%	27,840	8,618	31%
2016	59,692	59,170	99%	3,540	6%	52,147	10,546	20%
2017	41,435	40,810	98%	3,173	8%	42,497	13,381	31%
2018	50,036	49,100	98%	3,641	7%	34,953	14,088	40%
2019	76,020	69,488	91%	4,875	7%	72,837	14,518	20%
2020	30,557	15,381	50%	1,913	12%	16,837	15,160	90%
2021	144,834	122,731	85%	5,468	5%	107,686	21,894	20%
2022	149,093	128,904	86%	8,619	7%	127,447	55,960	44%
2023	131,519	118,938	90%	PENDING	PENDING	113,495	PENDING	PENDING

**Source:** UAC Apprehended by CBP: see sources for **Figure 1**; Apprehended UAC Referred to ORR: see sources for **Figure 2**; Referred UAC Receiving Home Studies, Referred UAC placed with Sponsors, and Placed UAC Receiving PRS: ORR Fact Sheets and Data, <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>. All percentages computed by CRS.

**Notes:** Years presented represent publicly available data. In some years, the number of UAC placed with sponsors exceeds the number of UAC referred to ORR because of timing differences in the volume of children processed by ORR at the start and end of fiscal years. N/A indicates the data were not available. PENDING indicates that CRS requested these data from ORR Leg Affairs.

During the 2023 oversight hearings on child labor trafficking (see the “Child Labor” section), some Members of Congress expressed concerns that ORR was unable to establish contact with over 85,000 children following sponsor placements during the previous two years.<sup>245</sup> Other Members and ORR personnel contended that such reports were misleading because the 85,000 figure represented the number of sponsors’ households that ORR attempted to contact that went unanswered, and that unresponsive sponsors may have had other reasons for not answering phone calls.<sup>246</sup> Similar figures were reported in prior years. Between August 2018 and December 2020,

<sup>245</sup> This figure was first reported in the New York Times. See Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 28, 2023. Because neither the article nor subsequent congressional hearing testimony specifies the start and end of the two-year period, CRS cannot compute a percentage of children that ORR could not contact post-placement based on this statistic. Data presented in **Figure 2** indicate ORR received custody of roughly 250,000 unaccompanied children between January 2021 and January 2023, which suggests that ORR was unable to make post-placement contact with roughly one-third of the children it placed over this period.

<sup>246</sup> Reasons suggested for not answering ORR’s follow-up calls include hesitancy to respond to calls from unknown government employees, having unauthorized status, and being fearful of traffickers. Testimony of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 26, 2018.



ORR reportedly was unable to contact 11.6% of sponsors or children following placement.<sup>247</sup> In April 2018, during a Senate Homeland Security and Governmental Affairs Committee hearing, an HHS official testified that ORR was unable to make contact with 1,475 of the 7,635 unaccompanied children (19%) placed with sponsors between October and December of 2017.<sup>248</sup> A 2016 HHS OIG report found a comparable proportion of uncontacted UAC, post-placement.<sup>249</sup>

Apart from constraints facing ORR, children and sponsors who meet the criteria to receive post-release services also face challenges to obtain the assistance. Despite its name, ORR does not directly provide services but rather refers children and sponsors to service providers in their own communities. The practical aspects of this arrangement can discourage service provision. Children and sponsors may have to travel considerable distances at their own cost to service provider locations, and may have to miss school or work in order to do so. Although unaccompanied children are lawfully present in the United States while they await their immigration hearings, they and often their sponsors lack any lawful immigration status, creating risks and challenges when engaging with community actors. Other challenges include linguistic barriers and waiting lists for services.<sup>250</sup>

Congress, in response, could consider numerous options including amending the INA in several ways, such as by (1) providing appropriations for HHS to work to ensure that all unaccompanied children released to sponsors are both contacted and provided PRS, including provisions for contingency funding and reprogramming to accommodate surges in UAC flows; (2) providing resources to support states and local governments that provide services to UACs to ensure that the services are more readily accessible; (3) expanding the Unaccompanied Refugee Minors (URM) Program;<sup>251</sup> and (4) expanding ORR's reporting requirements regarding PRS and other services provided to unaccompanied children.<sup>252</sup>

Congress could pass legislation granting ORR or another entity broad discretionary authority to act following the release of a UAC from custody. For instance, in light of uncertainty over the scope of its authority, Congress could expand the categories of children eligible for post-release services and otherwise clarify when HHS may or may not provide follow-up services. Congress might also consider amending the INA to expressly authorize HHS to reassume the custody of certain categories of children under certain circumstances. If Congress seeks ORR to have limited authority to provide post-release services, it could pass legislation that clarifies the type of follow-up services HHS may provide and restrict to whom the services can be provided.

<sup>247</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse*, Minority Staff Report, December 2022, pp. 44-45.

<sup>248</sup> Testimony of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 26, 2018.

<sup>249</sup> In FY2016, ORR was unable to contact 11% of sponsors and 16% of children. U.S. Department of Health and Human Services, Office of Inspector General, *HHS's Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children*, OEI-09-16-00260, July 2017, p. 8.

<sup>250</sup> See, for example, Breanne Leigh Grace and Benjamin J. Roth, "Bureaucratic neglect: the paradoxical mistreatment of unaccompanied migrant children in the US immigration system," *Journal of Ethnic and Migration Studies*, vol. 47 (2021), pp. 3455-3472.

<sup>251</sup> The URM program was originally established for unaccompanied children with refugee status. Over time, Congress has expanded eligibility to other unaccompanied child populations. For more information, see ORR, "Unaccompanied Refugee Minors Program," March 14, 2024, <https://www.acf.hhs.gov/orr/programs/refugees/urm>.

<sup>252</sup> For example, Section 602 of the Children's Safe Welcome Act of 2022 (S. 4529) from the 117<sup>th</sup> Cong. would have expanded ORR data collection and dissemination to assist those who want to understand and monitor its practices.

## Child Labor

Increased numbers of arriving unaccompanied children over the past decade have coincided with more reports of child labor trafficking and abuse.<sup>253</sup> Recently, the issue received substantial public attention following investigative reports by the *New York Times* describing widespread violations of child labor laws involving unaccompanied children.<sup>254</sup> Children as young as 12 years old, who were required to be enrolled in school, were reportedly working full-time, including nightshifts, in hazardous jobs such as roofing, meat processing, dairy farming, and lumber manufacturing. In one news article, a sample of about 60 interviewed caseworkers estimated that two-thirds of unaccompanied children released to sponsors in the United States ended up working full time. Many were reportedly paying off smuggling debts and/or sending remittances to families in their home countries.<sup>255</sup> Employers were often subcontractors for prominent U.S. corporations. Such activity was found throughout the United States.<sup>256</sup> Reportedly, HHS received warnings that such activities were occurring, and instead of taking action in response, sometimes retaliated against staff who reported their concerns about labor trafficking.<sup>257</sup>

In 2023, ORR and the Department of Labor (DOL), Wage and Hour Division established an interagency taskforce and signed a non-binding MOA establishing a collaborative relationship “to encourage greater coordination between them through information sharing, training, and education to further the goal of preventing and responding to instances of child labor exploitation and child labor trafficking.”<sup>258</sup>

Additionally, ORR launched an audit of individuals who sponsored or sought to sponsor multiple unrelated unaccompanied children released by ORR in 2021 and 2022. ORR also launched a review of its vetting requirements for potential sponsors who previously sponsored

<sup>253</sup> See, for example, Ben Penn and Ellen M. Gilmer, “U.S. Probes Trafficking of Teen Migrants for Poultry-Plant Work,” *Bloomberg Law*, August 19, 2021; Joshua Schneyer, Mica Rosenberg, and Kristina Cooke, “Teen risked all to flee Guatemala. Her payoff: grueling job in U.S. chicken plant,” *Reuters*, February 7, 2022; Mica Rosenberg, Kristina Cooke, and Joshua Schneyer, “Child workers found throughout Hyundai-Kia supply chain in Alabama,” *Reuters*, December 16, 2022. See also U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Adequacy of the Department of Health and Human Services’ Efforts to Protect Unaccompanied Alien Children From Human Trafficking*, hearing, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 28, 2016; and United States Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, staff report, undated.

<sup>254</sup> Livia Albeck-Ripka, “Sanitation Company Fined \$649,000 for Hiring Children in Slaughterhouses,” *New York Times*, May 7, 2024; Hannah Dreier, “U.S. Failed to Safeguard Many Migrant Children, Review Finds,” *New York Times*, February 15, 2024; Hannah Dreier, Brent McDonald, Nicole Salazar, Annie Correal, Carson Kessler, Karen Hanley, Rebecca Suner, and Claire Hogan, “Children, Injured and Dying on One of the Most Dangerous Jobs,” *New York Times*, December 14, 2023; Hannah Dreier and Meridith Kohut, “The Kids on the Night Shift,” *New York Times*, September 20, 2023; Hannah Dreier, “As Migrant Children Were Put to Work, U.S. Ignored Warnings,” *New York Times*, April 17, 2023; and Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 28, 2023.

<sup>255</sup> Hannah Dreier, “Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.,” *New York Times*, February 28, 2023.

<sup>256</sup> K.K. Rebecca Lai, “Where Migrant Children Are Living, and Often Working, in the U.S.,” *New York Times*, December 29, 2023.

<sup>257</sup> Ibid; HHS, Office of Inspector General, *Operational Challenges Within ORR and the ORR Emergency Intake Site at Fort Bliss Hindered Case Management for Children*, OEI-07-21-00251, September 27, 2022; and Letter from Richard J. Durbin, Chair, Senate Committee on the Judiciary, and Alex Padilla, Chair, Subcommittee on Immigration, Citizenship, and Border Safety, to Honorable Xavier Becerra, Secretary of Health and Human Services, June 29, 2023.

<sup>258</sup> DOL and HHS, *Memorandum of Agreement Between The United States Department of Labor Wage and Hour Division and The United States Department of Health and Human Services Administration for Children and Families Regarding Inter-Agency Data Sharing*, March 23, 2023.

unaccompanied children. The audit, based on a relatively small sample and conducted by ORR personnel, found that ORR was adhering to and in some cases exceeding its sponsor vetting procedures.<sup>259</sup> Other reports suggest that HHS ignored vetting protocols in some cases while faced with substantial surges of unaccompanied children starting in FY2021.<sup>260</sup>

Congress subsequently held oversight hearings in 2023 that largely questioned ORR's efforts to vet sponsors, track children following release from ORR custody, and provide children with post-release services.<sup>261</sup> Several Members questioned why ORR had altered its sponsor vetting procedures, reportedly in response to agency management pressure. As noted above, ORR was unable to establish contact with over 85,000 children following placements during the previous two years. ORR data show that calls to the ORR hotline for reporting trafficking, abuse, and neglect increased by 1,300% during the previous five years.<sup>262</sup> DOL data show substantial increases in minors employed in violation of child labor laws and child labor civil penalties.<sup>263</sup>

Some Members of Congress have proposed two broad approaches to addressing child labor violations. Under the first, Congress would amend the INA to eliminate the differential treatment of unaccompanied children from contiguous versus noncontiguous countries that was established in the 2008 TVPRA. Proponents argue that the TVPRA effectively facilitates a migration pipeline, controlled largely by transnational criminal organizations,<sup>264</sup> that allows children to enter, reside, and work in the United States for years while their cases plod through an overwhelmed immigration court system. Proponents assert that amending the TVPRA would disincentivize UAC migration from noncontiguous countries by promptly returning most children to their home countries, as currently occurs for Mexican unaccompanied children (see "Migration Incentives from the TVPRA" below).

The second approach addresses labor violations involving UAC who have already entered the United States. Under this approach, Congress would increase both DOL appropriations to increase the number of investigators working on child labor law enforcement and the penalties for firms that violate child labor laws directly or in their supply chains. Proponents of this approach argue that DOL's roughly 800 investigators are far too few to police labor law violations among 165 million workers and 11 million workplaces. Given the relatively low likelihood of detection and relatively modest penalties for detection, the proponents contend that employers seeking to

<sup>259</sup> The audit, conducted by a multidisciplinary team of ORR child welfare specialists, policy advisors, program analysts, and program managers, consisted of three components: 1) a record review of vetting policies for children released to non-relative sponsors who sponsored three or more children (n=344); 2) an in-depth case record review of compliance with follow-up procedures for 50% of the cases included in the record review (n=172); and 3) a separate selective review of reported caretaker changes to the ORR National Call Center regardless of the child's relationship with their sponsor (n=66). See ORR, *Update on Efforts to Mitigate Child Labor Exploitation and Internal Audit on Placement Process Used to Transfer Custody of Unaccompanied Children to Vetted Sponsors*, June 2023.

<sup>260</sup> See, for example, Jack Gillum and Michelle Hackman, "U.S. Officials Wanted to Avoid Trump's 'Kids in Cages' Problem. Doing So Created Another Dilemma," *Wall Street Journal*, July 8, 2024.

<sup>261</sup> U.S. Congress, House Committee on Oversight and Accountability, Subcommittee on National Security, the Border, and Foreign Affairs, *Oversight of the Office of Refugee Resettlement's Unaccompanied Alien Children Program*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., April 18, 2023; U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 26, 2018; U.S. Congress, Senate Judiciary Committee, *Ensuring the Safety and Well-Being of Unaccompanied Children, Part I*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., June 14, 2023; and U.S. Congress, Senate Judiciary Committee, *Ensuring the Safety and Well-Being of Unaccompanied Children, Part II*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2023.

<sup>262</sup> *Ibid.*

<sup>263</sup> DOL, Wage and Hour Division, "Child Labor," undated, <https://www.dol.gov/agencies/whd/data/charts/child-labor>.

<sup>264</sup> For more information, see CRS In Focus IF12539, *Federal Law Enforcement Efforts to Counter Human Smuggling and Human Trafficking*.

maximize profits have little incentive to comply with child labor laws.<sup>265</sup> Under this approach, Congress would also increase ORR appropriations to expand PRS.

The first approach assumes that unaccompanied children come to the United States primarily to seek economic opportunity and that the TVPRA facilitates this process, counter to the original intentions of Congress in 2008. The second approach affirms existing trafficking protections in the TVPRA and seeks to disincentive child labor violations by increasing penalties. The two approaches are not mutually exclusive.

Additional proposed reform measures extend beyond government enforcement by creating a private right of action for child labor violations; creating and funding the right to legal representation for unaccompanied children, thereby increasing the chance of labor violation detection; and allowing child labor violations whistleblowers to receive a portion of the penalties recovered to incentivize reporting.<sup>266</sup>

## Legal Representation

Although unaccompanied children may obtain counsel at their own expense or *pro bono*, they are not automatically provided one, because the Sixth Amendment’s guarantee of legal counsel for defendants in criminal cases does not apply to immigration proceedings, which are considered civil proceedings.<sup>267</sup> Consequently, many unaccompanied children enter immigration proceedings facing ICE immigration attorneys by themselves without a lawyer or child advocate.<sup>268</sup>

**Table 2. UAC Completed Case Outcomes by Legal Representation**  
(FY2005-FY2017)

Outcome	Cases With Legal Representation		Cases Without Legal Representation		Total Cases	
	Cases	% of Total	Cases	% of Total	Cases	% of Total
Removal Order	25,749	21%	75,662	84%	101,411	47%
Terminate Proceedings	51,601	42%	3,985	4%	55,586	26%
Voluntary Departure	12,062	10%	5,436	6%	17,498	8%
Immigration Relief	8,942	7%	308	<1%	9,250	4%
Other Closure	21,403	17%	3,352	4%	24,755	12%
Prosecutorial Discretion	4,400	3%	942	1%	5,342	2%
<b>Total</b>	<b>124,157</b>	<b>100%</b>	<b>89,685</b>	<b>100%</b>	<b>213,842</b>	<b>100%</b>

<sup>265</sup> Testimony of Terri Gerstein, CLJE Fellow, Harvard Law School, U.S. Congress, Senate Judiciary Committee, *Ensuring the Safety and Well-Being of Unaccompanied Children, Part I*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., June 14, 2023.

<sup>266</sup> *Ibid.*

<sup>267</sup> INA §292, 8 U.S.C. §1362 states that foreign nationals in any removal proceedings and related appeals, “shall have the privilege of being represented (at no expense to the government).” As noted above, 8 U.S.C. §1232(c)(5) requires ORR “to ensure to the greatest extent possible” that unaccompanied children have counsel to represent them in legal proceedings. For background information, see CRS In Focus IF12158, *U.S. Immigration Courts: Access to Counsel in Removal Proceedings and Legal Access Programs*.

<sup>268</sup> Between FY2005 and FY2017, for example, 36% of unaccompanied children did not receive legal counsel at any point during their cases. Transactional Records Access Clearinghouse (TRAC), “Unaccompanied Juveniles—Immigration Court Deportation Proceedings,” database, accessed by CRS on May 30, 2024 at <https://trac.syr.edu/phptools/immigration/juvenile>.

**Source:** Transactional Records Access Clearinghouse (TRAC), “Unaccompanied Juveniles—Immigration Court Deportation Proceedings,” <https://trac.syr.edu/phptools/immigration/juvenile>, 2021.

**Notes:** During this period, EOIR processed a total of 293,179 cases. Figures do not include 79,337 pending cases as of the end of FY2017. Percentages may not sum to 100% because of rounding.

**Table 2** highlights the impact of legal representation for children’s immigration court outcomes. EOIR data covering FY2005 through FY2017 indicate the agency completed a total of 213,842 cases at the end of FY2017.<sup>269</sup> Among just the 213,842 completed cases shown on far-right column of **Table 2**, 101,411 (47%) resulted in removal orders. Of completed cases that did not result in removal, 55,586 (26%) were terminated,<sup>270</sup> 17,498 (8%) resulted in voluntary departure,<sup>271</sup> 24,755 (12%) resulted in other outcomes,<sup>272</sup> and 5,342 (2%) resulted in prosecutorial discretion.<sup>273</sup> In 9,250 cases (4% of completed cases over this period), children received some form of immigration relief. Typical forms of immigration relief for UAC include asylum, special immigrant juvenile (SIJ) status for abused, neglected, or abandoned children who are declared dependent by state juvenile courts,<sup>274</sup> and T nonimmigrant status for victims of trafficking.<sup>275</sup>

Outcomes were considerably different for those with legal representation compared to those without representation. Of the children with legal representation, 7.2% received immigration relief; of those without legal representation, the figure was 0.3%. In contrast, children without legal representation received removal orders at more than twice the rate (47%) of children with legal representation (21%). Similar stark differences (not shown) based on legal representation occurred for unaccompanied children in removal proceedings between FY2018 and FY2021.<sup>276</sup>

Some child advocates contend unaccompanied children should be entitled to free legal representation, because such proceedings are adversarial and complex even for trained professionals and adults with formal education.<sup>277</sup> For children who don’t speak English,

<sup>269</sup> TRAC receives data from EOIR under the Freedom of Information Act. TRAC does not report immigration court data on unaccompanied children beyond FY2017 because it contends that EOIR data beyond that point are deficient. See TRAC, “Immigration Court’s Data on Minors Facing Deportation is Too Faulty to Be Trusted,” December 2, 2021, <https://trac.syr.edu/immigration/reports/669/>.

<sup>270</sup> Termination refers to a decision by an immigration judge to dismiss the case associated with a particular charging document. The conventional charging document given to a UAC who is put into removal proceedings is the *Notice to Appear*. If such a case is terminated, the child is not subject to removal related to the dismissed charging document. If DHS chooses to subsequently pursue the case, it must issue a new charging document.

<sup>271</sup> A UAC may elect to leave the United States voluntarily at any point during his or her removal proceedings. For more information on voluntary departure, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

<sup>272</sup> EOIR describes other outcomes as “administrative closure for reasons other than prosecutorial discretion, by joint motion, or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA).”

<sup>273</sup> Such outcomes typically resulted when ICE moved to dismiss a case because it was not an enforcement priority.

<sup>274</sup> For more information, see CRS Report R43703, *Special Immigrant Juveniles: In Brief*.

<sup>275</sup> For more information, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

<sup>276</sup> An earlier version of this report presented unpublished data provided to CRS by EOIR in 2021 that covered unaccompanied children’s outcomes from FY2018 through mid-FY2021. Over that period, 37% of children with legal representation received removal orders, and 7% received immigration relief in all completed cases. In contrast, 90% of unaccompanied children without legal representation received removal orders and 0.1% received immigration relief. As noted in footnote 269, TRAC contends that post-FY2017 EOIR data on immigration court outcomes for unaccompanied children contain numerous deficiencies. Accordingly, we present pre-FY2018 data in **Table 2**.

<sup>277</sup> See, for example, Shani M. King, “Alone and Unrepresented: A Call to Congress to Provide Counsel for Unaccompanied Minors,” *Harvard Journal on Legislation*, vol. 50 (2013); and W. Warren H. Binford, “Giving Voice to Unaccompanied Children in Removal Proceedings,” *Willamette Journal of International Law and Dispute Resolution*, vol. 21 (2013).



successfully navigating the proceedings alone is onerous.<sup>278</sup> Legal providers, facing limited resources and much need for their services, sometimes decline to represent children who have complicated cases; are too traumatized to share information with unfamiliar adults; speak indigenous or other rare languages; or have had contact with criminal or juvenile justice systems.<sup>279</sup> Some suggest that providing unaccompanied children with legal representation would increase the immigration court system's efficiency.<sup>280</sup>

Opponents argue that attempts to improve the immigration court system for children only continue to mask the flaws of current UAC laws and the immigration court system's current policies for dealing with unaccompanied children and encourage more parents to send their children unaccompanied to the United States.<sup>281</sup>

Congress has seen recent legislative proposals related to legal representation for unaccompanied children. For example, the B-VERIFY Act of 2023 (H.R. 4546) introduced in the 118<sup>th</sup> Congress would prohibit HHS from using government funds to provide legal counsel to unaccompanied children, as would H.R. 2 (Division B, Section 502). In contrast, the "Senate Amendment" (S.Amdt. 1386 to S.Amdt. 815), also from the 118<sup>th</sup> Congress, would amend the TVPRA to guarantee counsel at U.S. government expense for unaccompanied children ages 13 or younger in removal proceedings. Likewise, the Children's Safe Welcome Act of 2022 (H.R. 8349/S. 4529) introduced in the 117<sup>th</sup> Congress would have required each child in immigration custody to receive a legal orientation presentation and have access to legal counsel and child advocates.

## Migration Incentives from the TVPRA

Some immigration observers contend that increased apprehensions of unaccompanied children in the past 15 years are primarily an unanticipated consequence of the enactment of the 2008 TVPRA which allowed all non-Mexican children to enter and remain in the United States for extended periods. They point to apprehension levels that averaged less than 7,000 annually during the 2000s, more than doubled to about 20,000 in FY2009, and have remained at relatively high levels since then. Others attribute the growing role of criminal cartels and increased use of social media for motivating potential migrants to make the journey to the United States.

The TVPRA explicitly treats unaccompanied alien children as a vulnerable population, thereby allowing them to avoid certain restrictions facing other migrants. Unaccompanied children generally may enter and remain in the United States for an undetermined and typically extended period of time through an established program of temporary shelter and long-term sponsorship.<sup>282</sup> Some contend that once this differential treatment became widely known, families abroad

<sup>278</sup> See, for example, Mike LaSusa, "Influx Of Solo Kids Poses Challenge For Immigration Courts," *Law360*, March 31, 2022.

<sup>279</sup> Alyssa Snider and Rebecca DiBennardo, *Representation Matters: No Child Should Appear in Immigration Proceedings Alone*, Vera Institute of Justice, December 2021.

<sup>280</sup> See Sharon Finkel, "Voice of Justice: Promoting Fairness Through Appointed Counsel For Immigrant Children," *NYLS Journal of Human Rights*, vol. 17 (2001), pp. 1105-1138; and Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review*, vol. 164 (2015), pp. 1-91.

<sup>281</sup> See, for example, Andrew R. Arthur, "Bipartisan 'Children's Court Act of 2023' Would Just Make the (Already Bad) Migrant Child Crisis Worse," Center for Immigration Studies, November 3, 2023.

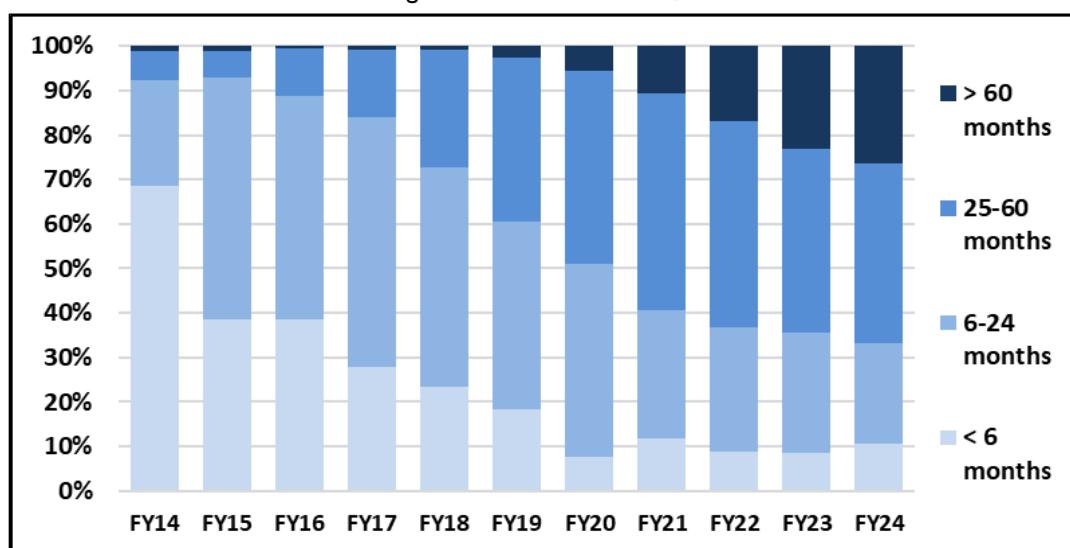
<sup>282</sup> An exception to this policy is when children arrive by sea; under that scenario they have far fewer rights and little due process compared to children who arrive by land. Reportedly, most are promptly returned to their home countries. See Seth Freed Wessler, "When the Coast Guard Intercepts Unaccompanied Kids," *ProPublica* and *The New York Times Magazine*, December 7, 2023; and Kids in Need of Defense (KIND), "Maritime Interdictions of Unaccompanied Children," April 2024.



incorporated it into their migration plans.<sup>283</sup> In the context of the significant toll that the COVID-19 pandemic took on the economies of many Central American countries, families facing severe poverty increasingly chose to send their teenage children to work in the United States in order to remit some of their earnings back home.<sup>284</sup> Aware of the TVPRA's preferential treatment for unaccompanied minors, these families are reportedly following a strategy of "self-separation" in which parents send their children alone with or without unrelated smugglers to the United States.<sup>285</sup>

Once in the United States, unaccompanied children face considerable wait times before they can expect an immigration judge to make a determination on their asylum case. EOIR data shown in **Figure 3** illustrate how immigration court wait times have extended for unaccompanied children entering the United States. When the first surge of UAC apprehensions occurred in FY2014, more than two-thirds of all pending (not completed) UAC cases were pending for under six months. Ten years later, two-thirds of all pending UAC cases involve durations of two years or longer, with a median case pending time of 1,103 days (3.0 years) and a median completion time of 1,254 days (3.4 years).<sup>286</sup>

**Figure 3. Still-Pending UAC Cases in Immigration Court, by Time Pending**  
Months of waiting time since start of case, FY2014-FY2024\*



**Source:** EOIR, "Pending Unaccompanied Noncitizen Child (UAC) Cases," April 19, 2024.

**Notes:** \*FY2024 is as of Q2, through March 31, 2024.

Proposals to allow CBP to voluntarily return all unaccompanied children and thereby eliminate the TVPRA's differential treatment between unaccompanied children from contiguous versus noncontiguous countries have been introduced repeatedly in Congress. Most recently, for example, the Secure the Border Act of 2023 (H.R. 2) from the 118<sup>th</sup> Congress would eliminate the

<sup>283</sup> See, for example, David Stoll, "Why Are Underage Central Americans in US Factories?," *Quillette*, April 5, 2023.

<sup>284</sup> Hannah Dreier, "As Migrant Children Were Put to Work, U.S. Ignored Warnings," *New York Times*, April 17, 2023. For a more extensive analysis, see Stephanie Canizales, *Sin Padres, Ni Papeles* [Without Parents or Papers]: *Unaccompanied Migrant Youth Coming of Age in the United States*, University of California Press, 2024.

<sup>285</sup> See, for example, Hamed Aleaziz and Miriam Jordan, "Biden's Border Crackdown Could Disproportionately Affect Families," *New York Times*, June 8, 2024.

<sup>286</sup> EOIR, "Median Unaccompanied Noncitizen Child (UAC) Case Completion, and Case Pending Time," April 19, 2024.

distinction between contiguous and noncontiguous countries for removal purposes. The bill would authorize immigration officers to permit a child to withdraw their application for U.S. admission even if the child were unable to act independently. It would also require that children have a hearing before an immigration judge within 14 days of screening.<sup>287</sup>

Opponents of these proposals maintain that the original intent of the TVPRA remains as relevant as when the law was enacted. They contend that transferring unaccompanied children from DHS to ORR custody ensures a robust screening for evidence of human trafficking by child welfare experts. They posit that the protection screening process for Mexican unaccompanied children is cursory and consistently fails to reveal evidence of trafficking and other protection needs.<sup>288</sup> They also argue that current high levels of unaccompanied children at the Southwest border is just one facet of what they characterize as among the worst refugee crises in recent history.<sup>289</sup>

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<sup>287</sup> For more information, see CRS Report R47901, *Immigration Legislation and Issues in the 118th Congress*.

<sup>288</sup> Kiera Coulter et al., “A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection,” *Journal on Migration and Human Security*, vol. 8 (2020), pp. 96-110.

<sup>289</sup> See, for example, World Economic Forum, *The Global Risks Report 2024*, January 10, 2024; Statement of Joseph Salazar, DOS Office Director, Office of Central American affairs, U.S. Congress, Senate Judiciary Committee, *Ensuring the Safety and Well-Being of Unaccompanied Children, Part II*, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., October 25, 2023; and United Nations High Commission for Refugees, *Global Trends: Forced Displacement in 2022*, June 14, 2023.

## Appendix. Congressional Funding

When UAC apprehensions reached a then-record high in 2014, policymakers initially focused on whether the executive branch agencies tasked with responding to the surge had adequate funding. As the surge began to wane, congressional attention shifted to mechanisms to prevent its recurrence. In recent years, congressional focus has emphasized funding ORR operations. ORR's UAC program is one line item in its Refugee and Entrant Assistance account.<sup>290</sup> Described below are funding requests, legislative action regarding funding, and executive branch budget execution, including budgetary transfers, reprogramming of funds, and reallocations since FY2015.<sup>291</sup>

### FY2015

In its FY2015 budget released in March 2014, the Obama Administration did not request funding increases to address the UAC surge. However, on May 30, 2014, the Office of Management and Budget (OMB) updated its cost projections for addressing the growing UAC population. It requested \$2.3 billion for FY2015 for ORR's UAC program and \$166 million for DHS for CBP overtime, contract services for care and support of UAC, and transportation costs.<sup>292</sup>

On July 8, 2014, the Obama Administration requested a \$3.7 billion supplemental appropriation for FY2015, much of which was directly related to addressing the UAC surge. The request included \$433 million for CBP, \$1.1 billion for ICE, \$1.8 billion for HHS's UAC program, \$64 million for DOJ, and \$300 million for the Department of State (DOS).<sup>293</sup>

In December 2014, the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) provided nearly \$1.6 billion for ORR's Refugee and Entrant Assistance Programs for FY2015, with the expectation that most of these funds would be directed toward the UAC program. In addition, P.L. 113-235 included a new provision allowing HHS to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds.<sup>294</sup>

In March 2015, the Department of Homeland Security Appropriations Act, 2015 (P.L. 114-4) provided \$3.4 billion to ICE for detection, enforcement, and removal operations, including transportation of unaccompanied alien children. The act required that DHS estimate the number of UAC apprehensions expected in the budget year and the number of necessary agent or officer

<sup>290</sup> Within the UAC program, shelter care accounts for about 75% of all program costs. Other services for UC, such as medical care, background checks, and family unification services, make up approximately 20% of the budget, followed by administrative expenses to carry out the program (5%). See HHS, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 62 (pdf). In addition to the UAC program, the Refugee and Entrant Assistance Program administers the following programs: Transitional/Cash and Medical Services, Victims of Trafficking, Social Services, Victims of Torture, Preventive Health, and Targeted Assistance. For additional information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

<sup>291</sup> For a more detailed analysis of the most recent congressional appropriations for HHS's Refugee and Entrant Assistance account, see CRS Report R47936, *Labor, Health and Human Services, and Education: FY2024 Appropriations*. CRS has published similar reports for earlier fiscal years.

<sup>292</sup> Executive Office of the President, Office of Management and Budget, Memorandum to Representative Nita Lowey, May 30, 2014.

<sup>293</sup> The White House, "Fact Sheet: Emergency Supplemental Request to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley Areas of the Southwest Border," press release, July 8, 2014.

<sup>294</sup> This paragraph is excerpted from CRS Report R43967, *Labor, Health and Human Services, and Education: FY2015 Appropriations*.

hours and related costs. It also provided for budgetary flexibility through the optional reprogramming of funds.<sup>295</sup>

## FY2016

In its FY2016 budget, the Obama Administration requested contingency funding, in addition to base funding, for several agencies in the event of another surge of unaccompanied children. For ORR's UAC program, the Administration requested \$948 million in base funding (the same as FY2015) and \$19 million in contingency funding.<sup>296</sup> Congress passed the Consolidated Appropriations Act, 2016 (P.L. 114-113) which met the base funding request but appropriated no monies for contingency funding.<sup>297</sup>

For FY2016 DHS funding, the Administration requested \$203.2 million in base funding and \$24.4 million in contingency funding for CBP for costs associated with the apprehension and care of unaccompanied children.<sup>298</sup> The Obama Administration requested \$2.6 million in contingency funding for ICE for transportation costs associated with UAC apprehensions if such apprehensions exceeded those in FY2015.<sup>299</sup> Neither the Senate<sup>300</sup> nor the House<sup>301</sup> committee-reported FY2016 DHS appropriations bills would have funded these requests. The Administration requested an additional \$50 million (two-year funding spread over FY2016 and FY2017) for EOIR to expand a program to provide legal representation to UAC.<sup>302</sup> Congress passed the Consolidated Appropriations Act, 2016 (P.L. 114-113) which did not provide funds for EOIR to expand their UAC legal representation program. In the act, Congress provided CBP with \$204.9 million in base funding but did not provide the contingency funding requested. Congress provided ICE with \$24.3 million in UAC transportation funding but did not fund the contingency transportation request.<sup>303</sup>

## FY2017

For FY2017, the Trump Administration requested \$1.3 billion for ORR for unaccompanied children. This UAC program request included \$1.2 billion in base funding. It also included

<sup>295</sup> Section 571 of the act permitted the DHS Secretary to reprogram funds within CBP and ICE and transfer such funds into the two agencies' "Salaries and Expenses" accounts for the care and transportation of UAC. Section 572 of the act allowed for State Homeland Security Program and Urban Area Security Initiative grants that are awarded to states along the Southwest border to be used by recipients for costs or reimbursement of costs for providing humanitarian relief to unaccompanied children.

<sup>296</sup> HHS, Administration for Children and Families, *Fiscal Year 2016, Justification of Estimates for Appropriations Committees*, p. 21.

<sup>297</sup> *Ibid.*, p. 8.

<sup>298</sup> The total CBP contingency request was for \$134.5 million for costs associated with the apprehension and care of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC apprehensions, the FY2016 budget scored the requested increase at \$24.4 million.

<sup>299</sup> Base funding for ICE to transport UAC was not separated out from other ICE transportation activities within its budget. The total ICE contingency request was for \$27.6 million for costs associated with transportation of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC requiring such transportation, the FY2016 budget scored the requested increase at \$2.6 million.

<sup>300</sup> U.S. Congress, Senate Committee on Appropriations, Subcommittee on Department of Homeland Security, *Department of Homeland Security Appropriations Bill, 2016*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 114-68.

<sup>301</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2016*, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., H.Rept. 114-215.

<sup>302</sup> U.S. Department of Justice, *FY 2016 Budget and Performance Summary*, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR).

<sup>303</sup> See DHS, *FY2017 Congressional Budget Justification*.

contingency funding, which, if triggered by larger than expected caseloads, would start at \$95 million and could expand to \$400 million.<sup>304</sup> For UAC operations within DHS, the Administration requested \$13.2 million for transportation and removal activities, including \$3 million in contingency funding; and \$217.4 million for CBP, including \$5.4 million in contingency funding.

Congress, in turn, passed two continuing resolutions (CRs) to fund ORR for FY2017. Congress first passed the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (P.L. 114-223), which funded ORR, ICE, and CBP from October 1, 2016, through December 9, 2016, at the same level and under the same conditions as FY2016, less an across-the-board reduction of 0.496%. Under the terms of the CR, HHS retained its authority from the 2016 bill (P.L. 114-113) to augment this account by up to 10% using transfers from other HHS accounts. HHS reportedly used this authority to transfer \$167 million into the account in November 2016, due to a surge in the UAC caseload.<sup>305</sup>

Prior to congressional consideration of a second CR, the Trump Administration requested that any new CR include a provision providing a higher operating level for the Refugee and Entrant Assistance account. This stemmed from an increased caseload resulting from the growth in the number of unaccompanied children from Central American countries apprehended at the Southwest border. The Administration requested \$3.9 billion in funding for the account, \$2.9 billion of which would be used for unaccompanied children. The Administration separately noted that it might be possible to meet caseload demands at a lower level than requested. It indicated that doing so would require at least \$500 million for the Refugee and Entrant Assistance account—of which \$430 million would be used for unaccompanied children—as well as additional transfer authority in the event of higher than anticipated costs.<sup>306</sup>

Congress then passed a second FY2017 CR, the Further Continuing and Security Assistance Appropriations Act, 2017 (P.L. 114-254), which funded most federal agencies through April 28, 2017.<sup>307</sup> It funded ORR programs at the same level and under the same conditions as in FY2016, minus an across-the-board reduction of 0.1901%.<sup>308</sup> However, this CR also contained a special provision authorizing HHS to transfer up to \$300 million, after February 1, 2017, to fund ORR programs dedicated to unaccompanied children.<sup>309</sup> After March 1, 2017, if the UAC caseload for FY2017 exceeded by 40% or more the UAC caseload for the comparable period in FY2016, the CR would have appropriated up to an additional \$200 million in new funding.

<sup>304</sup> HHS, Administration for Children and Families, *Fiscal Year 2017, Justification of Estimates for Appropriations Committee*, p. 237.

<sup>305</sup> Letter from Sylvia M. Burwell, Secretary of Health and Human Services, to the Honorable Roy Blunt, Chairman of the Labor, Health and Human Services, Education, and Related Agencies Subcommittee of the Senate Committee on Appropriations, November 9, 2016, provided by HHS to CRS. The general HHS transfer authority provision is located in Division H, Title II, Section 205 of the Consolidated Appropriations Act, 2016 (P.L. 114-113).

<sup>306</sup> The Trump Administration's anomaly requests for the second CR were based on the assumption that the CR would run through the end of March 2017, one month less than the duration of the CR that was ultimately enacted.

<sup>307</sup> P.L. 114-223.

<sup>308</sup> P.L. 114-254, §101(a)(2).

<sup>309</sup> P.L. 114-254, §170. The CR specifies that this transfer comes from the HHS Nonrecurring Expenses Fund (NEF). The NEF was created by the Consolidated Appropriations Act, 2008 (P.L. 110-161, Division G, Title II, §223) to enable the HHS Secretary to collect certain unobligated balances of expired discretionary funds appropriated to HHS from the General Fund. Funds transferred into the NEF typically support capital acquisitions across HHS, such as facilities infrastructure and information technology. The FY2017 CR also includes a provision rescinding \$100 million from the NEF (see §170(d)).

Congress subsequently passed the Consolidated Appropriations Act, 2017 (P.L. 115-31), which funded most federal agencies for the remainder of FY2017. It funded ORR programs at the same level and under the same conditions as in FY2016. P.L. 115-31 rescinded the provision in P.L. 114-254 to provide up to \$200 million in new funding if the UAC caseload met the conditions described above. Ultimately, final funding approved for ORR's unaccompanied alien children program for FY2017, including transfers, totaled \$1.4 billion.<sup>310</sup>

## FY2018

For FY2018, the Trump Administration requested \$948 million for ORR's UAC program. The request included an option to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds. The request excluded contingency funding provisions found in several previous years' requests.<sup>311</sup>

Congress responded by passing the Consolidated Appropriations Act, 2018 (P.L. 115-141), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Transfers permitted by Congress within HHS to this account totaled \$186 million. Within the account, funding for the Unaccompanied Alien Children program was increased to \$1.3 billion (+\$355 million relative to FY2017).<sup>312</sup> HHS also reprogrammed or transferred \$385 million from other HHS programs to ORR, reportedly to cover the additional expenses stemming from the zero tolerance policy.<sup>313</sup> Final actual spending for the UAC program for FY2018, including permissible transfers and reprogramming, was \$1.7 billion.<sup>314</sup>

## FY2019

For FY2019, the Trump Administration requested \$1.0 billion for ORR's UAC program.<sup>315</sup> The Administration further requested the option to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds. The budget also created a \$200 million contingency fund if caseloads met certain conditions.

Congress responded by passing the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (P.L. 115-245), which funded HHS's Refugee and Entrant Assistance account at \$1.9 billion. Within the account, funding for the Unaccompanied Alien Children program was \$1.3 billion, the same as for FY2018. Congress did not fund the requested contingency fund.<sup>316</sup>

<sup>310</sup> Total FY2017 budget authority included \$466,590,000 transferred from other parts of HHS. HHS, Administration for Children and Families, *Fiscal Year 2019, Justification of Estimates for Appropriations Committee*, p. 67.

<sup>311</sup> HHS, Administration for Children and Families, *Fiscal Year 2018, Justification of Estimates for Appropriations Committee*, pp. 11-45.

<sup>312</sup> See CRS Report R45083, *Labor, Health and Human Services, and Education: FY2018 Appropriations*, p. 29.

<sup>313</sup> H.Rept. 116-62, p. 11.

<sup>314</sup> HHS, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, p. 60.

<sup>315</sup> HHS, Administration for Children and Families, *Fiscal Year 2019, Justification of Estimates for Appropriations Committee*, pp. 67-71.

<sup>316</sup> U.S. Congress, Senate Committee on Appropriations, Subcommittee on Departments of Labor, Health and Human Services, and Education, and Related Agencies, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2019*, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 28, 2018, S.Rept. 115-289; and HHS, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committee*, p. 15.



On May 17, 2019, OMB notified Congress that it anticipated a budget shortfall for the UAC program of \$2.9 billion because of a 57% increase in the number of UAC referrals to ORR compared to the same period during the previous year. The notification indicated that HHS had already reallocated \$286 million to the UAC program using the HHS Secretary's transfer authority pursuant to P.L. 115-245 and had reprogrammed \$99 million within the Refugee and Entrant Assistance account.<sup>317</sup>

Congress responded by passing the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (P.L. 116-26) which contained nearly \$2.9 billion in emergency-designated appropriations for the Refugee and Entrant Assistance account. These funds were primarily intended to support the growing demands placed on the UAC program, including the use of influx care facilities in Carrizo Springs, Texas, and Homestead, Florida. Among the bill's many provisions, it required HHS to reverse any reprogramming within the account that had been carried out pursuant to the OMB notification.

Final actual spending for the UAC program for FY2019, including supplemental funding, permissible transfers and reprogramming, was \$4.5 billion.<sup>318</sup>

## FY2020

For FY2020, the Trump Administration requested \$1.3 billion, the same as the FY2019 appropriation. The Administration also requested transfer authority to allow additional funding of up to 20% of the appropriated amount into the account, which was above the 15% maximum that Congress provided in FY2019. The budget also included a request for a mandatory contingency fund capped at \$2.0 billion over three years, probabilistically scored at \$738 million for FY2020, if future caseload trends met certain conditions.<sup>319</sup>

Congress responded by passing the Consolidated Appropriations Act, 2021 (P.L. 116-260), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Within the account, Congress appropriated \$1.3 billion for the UAC program (the same as FY2019), did not fund the requested mandatory contingency fund, and maintained transfer authority at 15%.<sup>320</sup>

## FY2021

For FY2021, the Trump Administration requested \$2.0 billion, \$680 million above the FY2020 enacted level.<sup>321</sup> As with FY2020's budget, the Trump Administration also requested transfer authority to allow additional funding of up to 20% of the appropriated amount into the account, above the 15% maximum that Congress provided in FY2020. The budget also included a request for a mandatory contingency fund capped at \$2.0 billion over three years, probabilistically scored at \$200 million for FY2021, if future caseload trends met certain conditions.

<sup>317</sup> Report and Notice of Anticipated Deficiency, Letter from Russell T. Vought, Acting Director, Office of Management and Budget, to The Honorable Nancy Pelosi, Speaker of the House of Representatives, May 17, 2019.

<sup>318</sup> HHS, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, p. 60.

<sup>319</sup> HHS, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committee*, pp. 57-58.

<sup>320</sup> HHS, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, pp. 58-59.

<sup>321</sup> HHS, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, pp. 58-59.

Congress responded by passing the Consolidated Appropriations Act, 2021 (P.L. 116-260), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Within the account, Congress maintained funding for the Unaccompanied Alien Children program at \$1.3 billion, did not fund the requested mandatory contingency fund, and again maintained transfer authority at 15%.<sup>322</sup>

In response to increased UAC apprehensions and referrals in FY2021, ORR transferred \$287 million from other appropriations and \$135 million in refugee reprogramming. In addition, HHS transferred a total of \$1.9 billion from other health-related initiatives funded by the Coronavirus Response and Relief Supplemental Appropriations Act (within the Consolidated Appropriations Act, 2021, P.L. 116-260) to fund the Unaccompanied Alien Children program.<sup>323</sup> ORR records the FY2021 final enacted funding level at \$3.6 billion, which represents total appropriations, transfers, and reprogramming to fund that fiscal year's activities.<sup>324</sup>

## FY2022

For FY2022, the Biden Administration requested \$3.3 billion for the Unaccompanied Children's Program within the Refugee and Entrant Assistance account, an increase of \$2.0 billion above the \$1.3 billion enacted for FY2021.<sup>325</sup> The increase included a \$30 million set-aside to establish a Separated Families Services Fund that would provide mental health and other services for children, parents, and legal guardians who were separated under the Trump Administration's temporary "zero tolerance" policy.<sup>326</sup> Congress responded by passing the Consolidated Appropriations Act, 2022 (P.L. 117-103) which provided \$3.9 billion for the UC program.<sup>327</sup>

P.L. 117-103 retained the provision, included in HHS appropriations since FY2015, authorizing HHS to augment appropriations for the Refugee and Entrant Assistance account via transfers from other discretionary HHS funds. The 15% limit on such transfers was the same as in FY2021.

In May 2021, the Biden Administration reportedly estimated that it would require an additional \$4 billion before FY2021 ended to fund the UAC program.<sup>328</sup> Congress responded by passing the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43) and the Further Extending Government Funding Act (P.L. 117-70) which appropriated \$2.5 billion (emergency-designated funding) and \$1.6 billion, respectively, to support the unaccompanied children program in FY2022.<sup>329</sup> This brought total congressional appropriations for FY2022 to \$8.0 billion (\$3.9 billion plus \$1.6 billion plus \$2.5 billion).

<sup>322</sup> HHS, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 57.

<sup>323</sup> HHS, Administration for Children and Families, *Fiscal Year 2023, Justification of Estimates for Appropriations Committee*, p. 64.

<sup>324</sup> *Ibid*, p. 62.

<sup>325</sup> HHS, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 57. Starting with FY2022, HHS budget documents use the term "unaccompanied children" and the acronym "UC" when referring to unaccompanied alien children.

<sup>326</sup> *Ibid*, p. 60.

<sup>327</sup> U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2023*, committee print, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2023, H. Prt. 50-348, p. 2242.

<sup>328</sup> Eileen Sullivan, Zolan Kanno-Youngs and Luke Broadwater, "Overcrowded Border Jails Give Way to Packed Migrant Child Shelters," *New York Times*, May 10, 2021.

<sup>329</sup> U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2023*, committee print, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess., 2023, H. Prt. 50-348, p. 2242. Funding received by Congress for the UC program remains available for use over three years, allowing funding received in one year to be carried over and obligated in the following two years. HHS, Administration for Children and Families, *Fiscal Year 2023, Justification of Estimates for Appropriations Committee*, p. 64.

## FY2023

In September 2023, Congress passed the Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 (P.L. 117-180) which appropriated \$1.8 billion in emergency funding for ORR's Refugee and Entrant Assistance account. ORR indicated that it planned to use \$1.4 million of this emergency funding for the UC Program.<sup>330</sup>

For FY2023, the Biden Administration requested \$4.9 billion for the Unaccompanied Children's Program, a decrease of \$502 million from the \$5.4 billion enacted for FY2022.<sup>331</sup> Congress responded by passing the Consolidated Appropriations Act, 2023 (P.L. 117-328) which appropriated \$5.5 billion for unaccompanied children, the same as it had appropriated in non-emergency funding in FY2022. The act maintained transfer authority at 15%. It also included a contingency fund that provided ORR with \$27 million for each increment of 500 referrals (or prorated share) above a minimum limit of 13,000 UC referrals per month. Referrals exceeded the 13,000 threshold in August 2023, providing the UC program with an additional \$6 million.<sup>332</sup>

## FY2024

For FY2024, the Biden Administration requested \$5.5 billion for the Unaccompanied Children's Program, the same amount as the FY2023 budget appropriation. The budget request also sought to modify the FY2023 contingency fund, such that it would provide ORR with \$30 million (\$3 million more than the \$27 million in FY2023) for each increment of 500 referrals above a minimum limit of 10,000 UC referrals per month (3,000 fewer than the FY2023 limit).<sup>333</sup>

Congress responded by passing the Further Consolidated Appropriations Act, 2024 (P.L. 118-47) which provided \$5.4 billion for the UC Program.<sup>334</sup> As in previous years, it maintained transfer authority at 15%. It also modified the FY2023 contingency fund to provide ORR with \$15 million for each increment of 500 referrals above a minimum monthly limit of 16,000 referrals.<sup>335</sup>

## FY2025

For FY2025, the Biden Administration requested \$5.5 billion for the Unaccompanied Children's Program, the same amount as the FY2023 budget appropriation.<sup>336</sup> The budget request also seeks to modify the FY2023 contingency fund, such that it would provide ORR with \$30 million (\$3 million more than the \$27 million in FY2023) for each increment of 500 referrals above a minimum limit of 10,000 UC referrals per month (3,000 fewer than in FY2023).<sup>337</sup>

<sup>330</sup> HHS, Administration for Children and Families, *Fiscal Year 2025, Justification of Estimates for Appropriations Committee*, p. 77.

<sup>331</sup> HHS, Administration for Children and Families, *Fiscal Year 2023, Justification of Estimates for Appropriations Committee*, p. 65.

<sup>332</sup> HHS, Administration for Children and Families, *Fiscal Year 2025, Justification of Estimates for Appropriations Committee*, p. 77.

<sup>333</sup> HHS, Administration for Children and Families, *Fiscal Year 2024, Justification of Estimates for Appropriations Committee*, pp. 72-78.

<sup>334</sup> Explanatory Statement, H.R. 2882, Further Consolidated Appropriations Act, 2024, *Congressional Record*, vol. 170, part II (March 22, 2024), p. H2032.

<sup>335</sup> P.L. 118-47, p. 206.

<sup>336</sup> HHS, Administration for Children and Families, *Fiscal Year 2025, Justification of Estimates for Appropriations Committee*, p. 78.

<sup>337</sup> *Ibid*, p. 79.

## **Author Information**

William A. Kandel  
Specialist in Immigration Policy

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