A black and white photograph of a child's silhouette standing in a doorway, looking out into a bright light. The child is positioned on the right side of the frame, with their back to the camera. The doorway is the source of the light, creating a strong contrast between the dark interior and the bright exterior. The child's shadow is cast on the floor in the foreground.

CHILDREN IN DANGER

A GUIDE TO THE HUMANITARIAN CHALLENGE
AT THE BORDER

CHILDREN IN DANGER: A GUIDE TO THE HUMANITARIAN CHALLENGE AT THE BORDER

ABOUT THE AMERICAN IMMIGRATION COUNCIL

The American Immigration Council's policy mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, the Immigration Council provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. Our reports and materials are widely disseminated and relied upon by press and policymakers. Our staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. We are a non-partisan organization that neither supports nor opposes any political party or candidate for office.

Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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INTRODUCTION

The American Immigration Council has prepared this guide in order to provide policymakers, the media, and the public with basic information surrounding the current humanitarian challenge the U.S. is facing as thousands of young migrants show up at our southern border. This guide seeks to explain the basics. Who are the unaccompanied children and why are they coming? What basic protections are they entitled to by law? What happens to unaccompanied children once they are in U.S. custody? What has the government done so far? What additional responses have been proposed to address this issue?

The children's reasons for coming to the United States, their care, our obligations to them as a nation, and the implications for foreign and domestic policies are critical pieces we must understand as we move toward solutions. Acknowledging the complexity of the situation, President Obama declared an "urgent humanitarian situation" along the southwest border requiring a coordinated federal effort by a range of federal agencies. The government's subsequent response has ignited a vigorous debate between advocates for refugees and unaccompanied minors and the government. We hope that this guide helps those engaging in the debate to understand the key concepts and America's laws and obligations related to unaccompanied children.

BACKGROUND

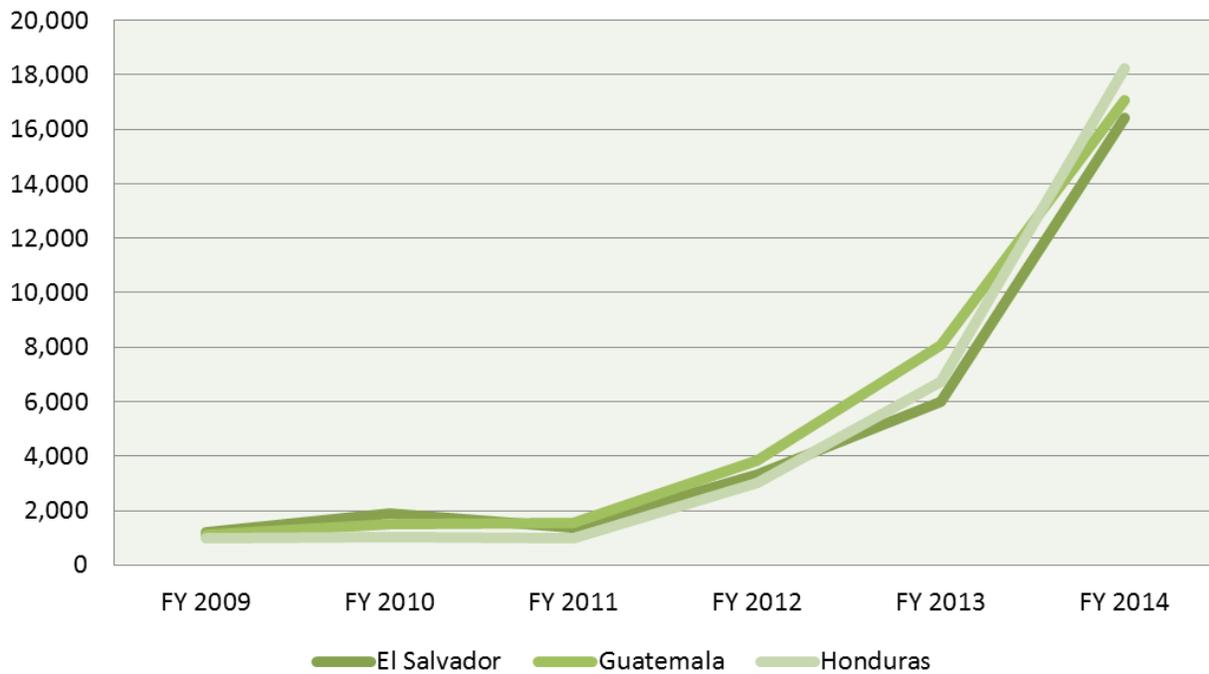
Who are the unaccompanied children?

Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. "Unaccompanied alien child" (UAC) is a technical term defined by law as a child who "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."¹ Due to their vulnerability, these young migrants must receive certain protections under U.S. law.

Where are these children coming from?

The vast majority of unaccompanied children come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. The recent increase in arrivals is due to the migration of children from Guatemala, Honduras, and El Salvador—a region of Central America known as the "Northern Triangle." According to U.S. Customs and Border Protection (CBP), 68,541 unaccompanied children were apprehended at the southwest border between October 1, 2013, and September 30, 2014. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).²

Figure 1: Unaccompanied Migrant Children Encountered;



FY 2009-2014*

Source: [CBP](#).

Why are these children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary recent motivation for migration, while identifying multiple causes including poverty and family reunification.³ A report by the [Assessment Capacities Project \(ACAPS\)](#), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively. In comparison, the war-torn country of the Democratic Republic of the Congo, from which nearly [half a million refugees have fled](#),⁴ has a homicide rate of 28.3 per 100,000 people. Furthermore, in a recent report Tom Wong took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: “meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States.”⁵

While there can be multiple reasons that a child leaves his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a prime motivation for migrating. Research conducted in El Salvador on child migrants who were returned from Mexico found that 61 percent listed crime, gang threats, and insecurity as a reason for leaving.⁶ The report, *Children on the Run*, by the United Nation’s High Commissioner for Refugees (UNHCR) found that 48 percent of the 404 children UNHCR interviewed “shared experiences of how they had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors.”⁷ Furthermore, the youth are frequently the target of the violence. Recruitment for the gangs begins in adolescence—or younger—and there are incidents of youth being beaten

by police who suspected them of gang membership.⁸

Are they coming because of President Obama's enforcement policy?

Recent U.S. immigration enforcement policy does not appear to be a primary cause of the migration, although the reasons behind so many unaccompanied children making their way to the United States are not simple. For instance, the rise in violence and corresponding increase in unaccompanied child arrivals precedes both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of S.744—positive developments that are sometimes cited as pull factors by Obama administration critics. In their 2012 report, the Office of Refugee Resettlement (ORR) stated that “in a five month period between March and July 2012, the UAC program received almost 7,200 referrals – surpassing FY2011’s total annual referrals.” As previously discussed, countries in the Northern Triangle of Central America face soaring murder rates and escalating gang violence. Research conducted by Elizabeth Kennedy, a Fulbright scholar in El Salvador, indicates that violence is the primary cause, even among those who also cite poverty or family reunification as reasons for their departure.⁹ This influx is not limited to the United States, as growing numbers of adults and children from those countries are also seeking refuge in Mexico, Panama, Nicaragua, Costa Rica, and Belize.¹⁰ Conditions in El Salvador, Honduras, and Guatemala have reached a tipping point, and more people are reaching the conclusion that they can no longer stay safely in their homes.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. The flow of undocumented immigrants into the United States is tied more to economic factors than to increased enforcement.¹¹ In this case, fear of violence is motivating the influx.¹² In addition, CBP's resources along the southwest border are already significant. There were 18,611 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2013.¹³ The annual Border Patrol budget now stands at \$3.5 billion.¹⁴ The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.¹⁵ Treating the current situation as simply another wave of illegal immigration misses the broader policy and humanitarian concerns that are driving it. In fact, many children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.

What do people mean when they talk about “international protection obligations?”

The United States has entered into numerous treaties with other countries to ensure the protection and safe passage of refugees.¹⁶ Among the most important are the 1952 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.¹⁷

Under our laws, anyone in the United States may seek asylum with limited exceptions, or protection from torture with no exceptions.

The United States has implemented these treaties in various laws and regulations. They form the basis for both our refugee program and asylum program. (An asylee is simply a refugee whose case is determined in the United States, rather than outside it.) In fact, under our laws, anyone in the United States may seek asylum with limited exceptions, or protection from torture with no exceptions. It can be difficult, and often complicated, to determine whether an individual has a valid claim for asylum or protection

from torture. For children, ensuring that they are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their story to a judge are all important components of ensuring that the U.S. meets its protection obligations.

Do Central American children qualify for international protection obligations?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's survey of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent “were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection.” Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras and 38 percent from Guatemala merited protection.¹⁸ While international protection standards are in some cases broader than current U.S. laws, the fact that over 50

percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children’s claims is necessary to prevent them from being returned to danger. Moreover, children may also qualify for particular U.S. forms of humanitarian relief, based on laws that recognize children as victims of trafficking and crime, or as children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in ORR custody could be eligible for relief from removal under U.S. laws.¹⁹ Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process—one that is not easily completed in a short period of time.

What is the Trafficking Victims Protection Reauthorization Act (TVPRA)?

The Trafficking Victims Protection Act was signed into law in 2000 to address human trafficking concerns. It was subsequently reauthorized during both the Bush and Obama administrations in 2003, 2005, 2008, and 2013, and subsequently referred to as the TVPRA.

Under provisions added in 2008, the TVPRA requires that all unaccompanied alien children be screened as potential victims of human trafficking.²⁰ However, as described further below, procedural protections for children are different for children from contiguous countries (i.e. Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs are reported, summarily returned pursuant to negotiated repatriation agreements.²¹ The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (i.e. a one-year filing deadline, and the standard safe third country limitation).²² It also required HHS to ensure “to the greatest extent practicable” that unaccompanied children in HHS custody have counsel, as described further below—not only “to represent them in legal proceedings,” but “protect them from mistreatment, exploitation, and trafficking.”²³

Under provisions added in 2008, the TVPRA requires that all unaccompanied alien children be screened as potential victims of human trafficking.

What types of relief do unaccompanied children potentially qualify for?

The most common types of relief for which children potentially are eligible include:

Asylum: Asylum is a form of international protection granted to refugees who are present in the United States. In order to qualify for asylum, a person must demonstrate a well-founded fear of persecution based on one of five grounds: race, religion, nationality, political opinion, or membership in a particular social group.

Special Immigrant Juvenile Status (SIJS): SIJS is a humanitarian form of relief available to noncitizen minors who enter the child welfare system due to abuse, neglect, or abandonment by one or both parents. To be eligible for SIJS, a child must be under 21, unmarried, and the subject of certain dependency orders issued by a juvenile court.

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have

suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

T visas: T visas are available to individuals who have been victims of a severe form of trafficking. To be eligible, the person must demonstrate that he or she would suffer extreme hardship involving unusual or severe harm if removed from the United States.

Are they refugees?

The vast majority of these children currently lack papers permitting them to reside lawfully in the United States and thus are part of the broader flow of undocumented immigration. However, many may be in need of international protection, requiring a careful and balanced analysis of their claims. UNHCR and many U.S.-based groups that monitor U.S. refugee and asylum practices have cautioned that concerns over illegal immigration should not trump the United States' international obligations to protect those fleeing persecution or other harm.²⁴ Because establishing an asylum claim may take time and frequently requires counsel, these groups ([including the American Immigration Council](#)) have warned that accelerated processing could cause adjudicators to overlook legitimate claims for asylum.

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past based on natural disasters, there is currently no category that would include the unaccompanied children arriving today. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

PROCEDURES AND POLICIES

How are unaccompanied children treated compared to adults and children arriving in families?

Adults, families, and unaccompanied children are treated differently under U.S. law.

Adults, when apprehended, are traditionally placed in removal proceedings before an immigration court.²⁵ However, in FY 2012, 75 percent of adults removed by the U.S. were removed through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.²⁶ This commonly occurs through [expedited removal](#), when an adult noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents.²⁷ This also commonly occurs through “reinstatement of removal,” when an adult noncitizen unlawfully reenters after a prior removal order.²⁸ Most adults apprehended at or near the border will be placed into expedited removal or reinstatement of removal.

Families (adults traveling with children) can also be processed under these provisions. Unaccompanied children, however, receive greater protections under U.S. law.

What happens to unaccompanied children once they're in U.S. custody?

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP, which is a part of the Department of Homeland Security (DHS).²⁹ Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings under the TVPRA of 2008, signed by President Bush.³⁰

The TVPRA of 2008 responded to concerns that unaccompanied children apprehended by the Border Patrol “were not being adequately screened” for eligibility for protection or relief in the United States.³¹ The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated.

Children from non-contiguous countries, such as El Salvador, Guatemala, or Honduras, are placed into standard removal proceedings in immigration court. CBP must transfer custody of these children to Health and Human Services (HHS) within 72 hours, as described below.

Children from contiguous countries—Mexico or Canada—must be screened by CBP officers to determine if each child is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called “voluntary return.” Although voluntary return does not carry the same consequences as deportation, CBP is not required to first turn over Mexican or Canadian children to HHS, unlike children from other countries. Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process, negotiated by the U.S. Department of State.³²

NGOs have expressed concern that CBP is the “wrong agency” to screen children for signs of trauma, abuse, or persecution.

Non-governmental organizations (NGOs) have expressed concern that CBP is the “wrong agency” to screen children for signs of trauma, abuse, or persecution.³³ Applesseed issued a report that stated “as a practical matter,” CBP screening “translates into less searching inquiries regarding any danger they are in and what legal rights they may have.”³⁴ Applesseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards “protocols of repatriations logistics,” rather than best practices for child welfare.³⁵

Do the children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the “privilege” of being represented “at no expense to the Government.”³⁶ This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children “to the greatest extent practicable,” Congress further explained

that the Secretary “shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.”³⁷ A vast network of pro bono legal service providers has responded to the call, and these providers represent many children nationwide, but they simply are unable to meet the need.

As a result, each year, thousands of children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child’s deportation, is represented in every case by a lawyer trained in immigration law.

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the “best interests” of the child into account. As background, adults who are processed by CBP (if encountered at or near the border) are held in short-term CBP custody and then transferred to Immigration and Customs Enforcement (ICE) custody. As a DHS report found, despite the civil nature of immigration laws, “the facilities that ICE uses to detain [adults] were built, and operate, as [criminal] jails and prisons,” with “only a few exceptions.”³⁸

Children who arrive with a parent may be detained by DHS in family detention centers, described below.

Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.³⁹ ORR’s Unaccompanied Alien Children Program, then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to “promptly place” each child in its custody “in the least restrictive setting that is in the best interests of the child.”⁴⁰ As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.⁴¹

Under international law, children “should in principle not be detained at all,” according to the United Nations High Commissioner for Refugees.

Under international law, children “should in principle not be detained at all,” according to UNHCR.⁴² Detention, if used, should only be a “measure of last resort” for the “shortest appropriate period of time,” with an overall “ethic of care.”⁴² Detention has “well-documented” negative effects on children’s mental and physical development,⁴³ including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.⁴⁵

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children’s best interests are served by living in a family setting.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation

proceedings are in progress.⁴⁶ Recently, ORR decided to resume requiring fingerprint checks for sponsors, due to concerns about fraud, abuse and children’s safety.⁴⁷ Previously, in 2013, ORR had decided to stop fingerprinting certain sponsors to speed up the process, because of a lack of resources.⁴⁸

ORR is also required to ensure that individuals taking custody of the children are able to provide for their well-being.⁴⁹ A court settlement in the case *Flores v. Reno* outlines the following preferences for sponsors:⁵⁰ (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. The sponsor must agree to ensure that the child attends immigration court.

Why is the Government opening family detention Facilities?

The increase in families arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.⁵¹

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either “release families,” use “alternatives to detention such as the Intensive Supervised Appearance Program,” or, if necessary, use “appropriate” detention space to house families together.⁵²

ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. The Women’s Refugee Commission, however, explained that it was a “former criminal facility that still looks and feels like a prison.”⁵³ For example, although DHS claimed Hutto was specially equipped to meet the needs of families, reports emerged that children as young as 8 months old wore prison uniforms, lived in locked prison cells with open-air toilets, were subject to highly restricted movement, and were threatened with alarming disciplinary tactics, including threats of separation from their parents if they cried too much or played too loudly. Medical treatment was inadequate and children as young as 1 year old lost weight.⁵⁴

The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.⁵⁵ In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more “thoughtfully and humanely.”⁵⁶ The recent announcement that ICE will open additional family detention centers, with the first facility in Artesia, New Mexico, marks the first expansion of family detention since Hutto’s closing.⁵⁷

Parents reported that guards frequently threatened children with separation from parents for misbehavior, with children losing respect for parents because of parents’ lack of control.

Family detention is rarely in the “best interests of the child,” as opposed to community-based alternatives.⁵⁸ Families and children require specialized educational, medical, and legal support. But although governments can control families in detention, critics have argued that detaining families in jail-like settings profoundly impacts the emotional and physical well-being of children and breaks down family relationships. Parents reported that guards frequently threatened children with separation from parents for misbehavior, with children losing respect for parents because of parents’ lack of control.⁵⁹ Additionally, parents reported being forced to meet

lawyers and discuss details of abuse in front of their children.⁶⁰ Conversely, countries like Belgium have open reception facilities for migrant families seeking asylum, where they can come and go at will with certain restrictions.⁶¹ Caseworkers are assigned, and officials report high rates of attending proceedings.⁶²

Can Alternatives to Detention Be Used?

Yes. ICE operates alternatives to detention (ATD) for adult detainees—one program with case management, supervision, and electronic monitoring, and another program with electronic monitoring only.⁶³ U.S. government [data shows](#) that alternatives to detention are 96 percent effective in ensuring appearance in immigration court. Alternatives, as well as being more humane, are also less expensive than detention—\$17/day and less, as opposed to \$159/day.⁶⁴ Bipartisan support has emerged for alternatives to immigration detention,⁶⁵ as it has emerged for alternatives to criminal incarceration.⁶⁶

There appears to be no legal barrier to using alternatives to detention for families who would otherwise be in family detention. It is unclear whether supervision techniques such as electronic tracking bracelets will be used on children.⁶⁷

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

What has the government done thus far?

On June 2, 2014, President Obama issued a [memorandum](#) terming the influx of children along the border “an urgent humanitarian situation” under the Homeland Security Act, requiring coordination of federal government agencies. President Obama then directed the Secretary of Homeland Security to establish a Unified Coordination Group, which includes DHS and its components together with the Departments of Health and Human Services, Defense, Justice, and State, and the General Services Administration. In turn, Secretary of Homeland Security Jeh Johnson designated Federal Emergency Management Agency (FEMA) Administrator Fugate to coordinate the U.S. government-wide response.

A White House [fact sheet](#) stated that the government is “taking steps to improve enforcement and partnering with our Central American counterparts in three key areas: combating gang violence and strengthening citizen security, spurring economic development, and improving capacity to receive and reintegrate returned families and children.” Secretary Johnson, [in his testimony](#) before the House Committee on Homeland Security, laid out DHS’ plan to address the situation. It includes adding capacity to process and house the children, increasing Spanish-speaking staff, increasing transportation assets, coordinating with faith-based and voluntary organizations, and initiating a public affairs campaign in Spanish in Central America about the dangers of the journey to the United States.

Since the increase in arrivals of unaccompanied children, HHS requested and received approval from the Department of Defense for the use of Lackland Air Force base in San Antonio and a Naval

Base in Ventura County in California. These facilities hold 1,290 and 600 children, respectively. Facilities at Fort Sill, Oklahoma, also were housing roughly 1,000 children as of June 25 and had capacity to hold up to 1,200.⁶⁸ Secretary Johnson also announced plans to create new family detention centers, starting with a large temporary facility in Artesia, New Mexico.⁶⁹

On June 30, 2014, the President sent a [letter](#) to Congress outlining additional administration steps and requests for congressional action. The President stated he was “taking aggressive steps to surge resources to our southwest border.” The Justice Department and DHS will be deploying additional immigration judges, ICE attorneys, and asylum officers to the border. The administration’s stated goal is that “cases are processed fairly and as quickly as possible, ensuring the protection of asylum seekers and refugees while enabling the prompt removal of individuals who do not qualify for asylum or other forms of relief from removal.”

“Part of this surge will include” family detention (in the letter’s words, “detention of adults traveling with children”), and DHS will be “working to secure additional space that satisfies applicable legal and humanitarian standards.” Reports indicate the government will seek to send families held in the new immigration detention centers back to their home countries within 10 to 15 days.⁷⁰ The letter also stated that “expanded use of the Alternatives to Detention program” would be used “to avoid a more significant humanitarian situation.”

On July 8, the Obama administration asked Congress for \$3.7 billion to address the situation. Congress must approve the funding, which would, according to news reports, [speed up](#) removal proceedings to decide if unaccompanied children can stay in the U.S. or if they will be sent back to Central America.⁷¹ In a [letter](#) to House Speaker John Boehner, the White House laid out how the sum would be split between multiple government agencies to apprehend, care for, and remove unaccompanied minors who are in the U.S.⁷² According to the White House, the [\\$3.7 billion](#) would consist of:

- **\$1.8 billion to the Department of Health and Human Services** for additional capacity to care for unaccompanied children transferred from Homeland Security custody and the necessary medical response to the arrival of these children.
- **\$1.1 billion to Immigration and Customs Enforcement** that would cover \$879 million for the detention, prosecution, and removal of apprehended undocumented families; \$116 million for transportation costs associated with the surge in apprehensions of unaccompanied children; and \$109 million for expanded domestic and international investigative and enforcement efforts.
- **\$433 million to Customs and Border Protection**, including \$364 million for operational costs associated with apprehending unaccompanied children and families; \$29 million for expansion of the Border Enforcement Security Task Force program; and \$39 million to increase air surveillance capabilities to detect illegal activity in the Rio Grande Valley region.
- **\$300 million to the Department of State** to cover \$295 million for repatriation of migrants to Central America and to help governments in the region better control their borders and address the root causes of the migration. And \$5 million would support State Department media campaigns in Mexico, Guatemala, El Salvador, and Honduras to tell potential migrants not to make the dangerous journey.

- **\$64 million to the Department of Justice Administrative Review and Appeals**, including \$45.4 million for additional immigration judge teams to increase case processing, \$2.5 million for expansion of legal orientation program, \$1.5 million for direct legal representation services to children in immigration proceedings, and \$1.1 million for additional legal activities.⁷³

What additional responses have been proposed to address this Issue?

NGOs, advocacy groups, and legislators have proposed short-term solutions to the current influx, longer-term systematic U.S. reforms to more holistically protect children and families reaching the U.S., and longer-term reforms in sending countries to address root causes and reduce the influx of children and families to the U.S.

Short-Term Solutions

Short-term proposals have focused on adding resources to process children and families' claims so that children can be transferred in a timely manner from CBP facilities not designed for them,⁷⁴ and children and families will receive a "timely, but not rushed" hearing.⁷⁵ These proposals include additional immigration judges and U.S. Citizenship and Immigration Services (USCIS) asylum officers, to avoid reallocation and increased backlogs elsewhere;⁷⁶ additional use of community-based shelters and alternatives to detention, to avoid additional human and financial costs;⁷⁷ and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.⁷⁸

Longer-Term U.S. Systemic Reforms

Additionally, before the recent influx, NGOs and legislators had proposed longer-term reforms to more holistically protect children and families fleeing violence who reach the U.S. These reforms include:

- **Incorporating a "best interests of child" standard into all decision-making, not just custody decisions.**⁷⁹ S. 744, which the Senate passed in 2013, would require the Border Patrol, in the case of repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."⁸⁰ Amendment 1340, ultimately not included, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.⁸¹ Organizations also recommended adopting more child-specific procedures.⁸²
- **Child welfare screening to replace or augment Border Patrol screening.** NGOs have uniformly questioned Border Patrol agents' adequacy to screen children for trafficking and persecution, as Border Patrol now does for Mexican and Canadian children, and prevent their return to their persecutors or abusers.⁸³ Reform proposals have ranged from improved training for CBP officers (included in S. 744),⁸⁴ to pairing CBP screeners with child welfare experts (also in S. 744)⁸⁵ or NGOs,⁸⁶ to replacing CBP screeners with USCIS asylum officers.⁸⁷
- **Due process protections and resources.** NGOs have advocated for a system that provides procedural protections, resources, and time to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.⁸⁸ Proposals include appointed counsel,⁸⁹ legal orientation programs,⁹⁰

and additional resources to backlogged immigration courts (all included in S. 744).⁹¹

- **Detention reforms.** NGOs have proposed that children be detained as little as possible,⁹² released to families or other sponsors whenever appropriate,⁹³ and if detained, supervised in a community-based setting⁹⁴ because of detention's severe impact on children.⁹⁵ Along these lines, organizations and legislators have recommended improving detention conditions,⁹⁶ and expanding alternatives to detention (as S. 744 does),⁹⁷ by reallocating detention funding to those cheaper alternatives.⁹⁸

Reforms in Sending Countries

Lastly, organizations have proposed reforms in sending countries to improve conditions and ultimately reduce the influx of refugees to the United States. These reforms include:

- **Aid to sending countries.** NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.⁹⁹
- **Screening of refugees in sending countries.** NGOs have also proposed pilots for implementing robust screening for persecution in sending countries before children reach the U.S., as the U.S. implemented in the former Soviet Union and Haiti.¹⁰⁰ Mechanisms for this exist under current law (Section 104 of the 2008 TVPRA).¹⁰¹

ENDNOTES

- ¹ 6 U.S.C. 279(g).
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- ³ United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 2014, http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf; Elizabeth Kennedy, *No Childhood Here: Why Central American Children Are Fleeing Their Homes*, American Immigration Council, September 24, 2014.
- ⁴ UNHCR, “[2014 UNHCR country operations profile – Afghanistan](#),” 2014.
- ⁵ Tom Wong, “[Statistical Analysis Shows that Violence, Not U.S. Immigration Policies, Is Behind the Surge of Unaccompanied Children Crossing the Border](#),” 2014.
- ⁶ Kennedy, 2014.
- ⁷ UNHCR, *Children on the Run*, March 12, 2014.
- ⁸ Kennedy, 2014.
- ⁹ Kennedy, 2014.
- ¹⁰ Leslie E. Velez, UNHCR, *Testimony to U.S. House Judiciary Committee*, June 25, 2014, p. 5.
- ¹¹ American Immigration Council, *Tackling the Toughest Questions on Immigration Reform: Short Answers to the Most Common Questions*, July 29, 2013.
- ¹² Molly Hennessy-Fiske, “[On the Texas border, patrol chief sees younger faces](#),” *LA Times*, June 27, 2014.
- ¹³ U.S. Border Patrol, “[U.S. Border Patrol Fiscal Year Staffing Statistics](#),” January 27, 2014.
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- ¹⁵ Marc R. Rosenblum, *Border Security: Immigration Enforcement Between Ports of Entry* (Washington, DC: Congressional Research Service, May 3, 2013), pp. 17-18.
- ¹⁶ UNHCR, *The 1951 Refugee Convention*.
- ¹⁷ United Nations, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1985.
- ¹⁸ UNHCR, *Children on the Run*, March 12, 2014, p. 6.
- ¹⁹ Vera Institute of Justice, *The Flow of Unaccompanied Minors Through the Immigration System* (2010), at 24-25.
- ²⁰ Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008), at <http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>. See also Polaris Project, “[Current Federal Laws](#),” <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/current-federal-laws>
- ²¹ 8 U.S.C. § 1232. See also Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson, “Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Practice Advisory,” AILA Infonet Doc. No. 09021830, available at http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf
- ²² Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson, “Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Practice Advisory,” AILA Infonet Doc. No. 09021830, available at http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf.
- ²³ Pub. L. 110-457, 122 Stat. 5079, sec. 235(c)(5) (8 U.S.C. § 1232(c)(5)).
- ²⁴ UNHCR recommended in short that “[t]he extreme vulnerability of a child takes precedence over the status of an ‘illegal alien.’” UNHCR Detention Guidelines, ¶52 (2012), <http://www.unhcr.org/505b10ee9.html>.
- ²⁵ 8 U.S.C. § 1229a.
- ²⁶ Marc R. Rosenblum and Doris Meissner, *The Deportation Dilemma: Reconciling Tough and Humane Enforcement* (Washington, DC: Migration Policy Institute, April 2014), <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>.
- ²⁷ 8 U.S.C. § 1225(b)(1)(A)(i) (expedited removal provisions); § 1182(a)(6)(C) (fraud and misrepresentation provisions); § 1182(a)(7)(A)(i)(I) (insufficient documents provisions).
- ²⁸ 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 1241.8.
- ²⁹ Congressional Research Service, *Unaccompanied Alien Children: An Overview* (June 13, 2014), <http://fas.org/sgp/crs/homsec/R43599.pdf>.
- ³⁰ P.L. 110-457.
- ³¹ CRS at 4.
- ³² CRS at p. 4.
- ³³ Appleseed, Letter to Congressional Research Service, May 23, 2014, at p. 2; Appleseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>; Women’s Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009).
- ³⁴ Appleseed, Letter, p. 4.
- ³⁵ Appleseed, Letter, p. 4.
- ³⁶ 8 USC § 1362.
- ³⁷ 8 USC § 1232(c)(5).
- ³⁸ Dr. Dora Schriro, Department of Homeland Security, Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations*, p. 2, October 6, 2009, <http://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.
- ³⁹ 8 USC § 1232(b)(3).
- ⁴⁰ 8 USC § 1232(c)(2).
- ⁴¹ U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, *Unaccompanied Alien Children Program, Fact Sheet*, <https://www.acf.hhs.gov/sites/default/files/orr/>

[unaccompanied_childrens_services_fact_sheet.pdf](#).

⁴² UNHCR Detention Guidelines, “Guideline 9.2, Children,” ¶¶ 51-57, 2012, <http://www.unhcr.org/505b10ee9.html>.

⁴³ UNHCR Detention Guidelines, ¶ 52.

⁴⁴ UNHCR Detention Guidelines, ¶ 52.

⁴⁵ Alice Farmer, The impact of immigration detention on children, *Forced Migration Review*, 2013, <http://www.fmreview.org/detention/farmer>.

⁴⁶ U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program, *Fact Sheet*, https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

⁴⁷ Associated Press, *Feds launch bilingual hotline for parents of migrant children*, June 20, 2014, at <http://www.foxnews.com/us/2014/06/20/feds-launch-bilingual-hotline-for-parents-migrant-children/>.

⁴⁸ Molly Hennessy-Fiske, *More youths crossing U.S.-Mexico border alone*, L.A. Times (Feb. 21, 2014), at <http://articles.latimes.com/2014/feb/21/nation/la-na-texas-young-migrants-20140222>.

⁴⁹ 8 USC § 1232(c)(3).

⁵⁰ Congressional Research Service, *Unaccompanied Alien Children: An Overview* (June 13, 2014), p. 10, <http://fas.org/sgp/crs/homesec/R43599.pdf>.

⁵¹ Women’s Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families*, p. 2, 2007, http://www.womensrefugeecommission.org/component/docman/doc_download/150-locking-up-family-values-the-detention-of-immigrant-families-locking-up-family-values-the-detention-of-immigrant-families?q=locking+family.

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⁵³ WRC and LIRS at 2.

⁵⁴ Grassroots Leadership, *Letter to DHS Secretary Jeh Johnson* (July 2, 2014), <http://grassrootsleadership.org/sign-against-return-family-detention>.

⁵⁵ Margaret Talbot, *The Lost Children*, *The New Yorker* (March 3, 2008), at http://www.newyorker.com/reporting/2008/03/03/080303fa_fact_talbot?currentPage=all.

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⁵⁸ Katharina Obser, *Human Rights First, Children and Families Seeking Protection Deserve Better than Detention and Summary Deportation*, July 2, 2014, <http://www.humanrightsfirst.org/blog/children-and-families-seeking-protection-deserve-better-detention-and-summary-deportation>.

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⁶⁴ National Immigration Forum, *The Math of Immigration Detention*, August 2013, <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

⁶⁵ Council on Foreign Relations, *Jeb Bush and Thomas F. McLarty III, Chairs, Independent Task Force Report No. 63, U.S. Immigration Policy*, p. 106-107 (July 2009), http://www.cfr.org/immigration/us-immigration-policy/p20030?breadcrumb=/bios/2472/edward_alden?page=2; Elisa Massimino and Grover Norquist on Immigration Detention, *Human Rights First*, May 2, 2013, at <https://www.youtube.com/watch?v=rOGc7PWdhWg>.

⁶⁶ See Richard Viguerie, *A Conservative Case for Prison Reform*, N.Y. Times, June 9, 2013, http://www.nytimes.com/2013/06/10/opinion/a-conservative-case-for-prison-reform.html?_r=0; Right on Crime, at <http://www.rightoncrime.com/>.

⁶⁷ The White House, Office of the Press Secretary, *Press Briefing by Principal Deputy Press Secretary Josh Earnest* (June 20, 2014) (Q: “[A]re you going to be putting ankle bracelets on [these] kids? A: “I’d refer you to DHS for that...””), at <http://www.whitehouse.gov/the-press-office/2014/06/20/press-briefing-principal-deputy-press-secretary-josh-earnest-62014>.

⁶⁸ Chris Casteel, “Oklahoma Rep. Jim Bridenstine wants “unfettered access” to Fort Sill facility holding minors,” *The Oklahoman*, July 7, 2014.

⁶⁹ <http://washington.cbslocal.com/2014/06/27/officials-nm-detention-center-will-be-focused-on-deporting-illegal-immigrants-within-15-days/>.

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⁷¹ Elise Foley, “*Obama Requests \$3.7 Billion To Deal With Border Crisis*,” *The Huffington Post*, July 8, 2014.

⁷² The White House, “*Letter to the Speaker of the House of Representatives*,” July 8, 2014.

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⁷⁴ James Silkenat, President, American Bar Association, *Statement, House Judiciary Committee*, June 25, 2014, p. 2, http://www.americanbar.org/content/dam/aba/unacategorized/GAO/2014june25_unaccompaniedalienminors_t.authcheckdam.pdf; *Women’s Refugee Commission, Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), p. 2;

⁷⁵ Human Rights First, *How to Manage the Increase in Families At the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>.

⁷⁶ Human Rights First, *How to Manage the Increase in Families At the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>. Although additional resources would speed up cases, organizations also note that a child or adult should have time to recover from dangerous and abusive travels, receive a legal orientation program, obtain legal counsel, and assist in preparing their case, before facing government officials and removal. *Id.*

⁷⁷ Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2; Human Rights First, *How to Manage the Increase in Families At the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>.

⁷⁸ United States Conference of Catholic Bishops (USCCB), *Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas*, House Judiciary Committee, p. 10-11, June 25, 2014 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services), [hereinafter USCCB HJC Testimony], <http://judiciary.house.gov/cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf>; Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2. USCCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USCCB HJC Testimony, p. 11.

⁷⁹ The “best interests of child” standard is internationally recognized. In the U.S. child welfare system, it applies special importance to “family integrity, health, safety, protection of the child, and timely placement.” The United States Conference of Catholic Bishops (USCCB) has thus recommended a “transnational family approach,” with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, p. 12, [hereinafter USCCB HJC Testimony], <http://judiciary.house.gov/cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf>.

⁸⁰ S. 744, *An act to provide for comprehensive immigration reform and for other purposes*, Sec. 1115(b)(1)(B), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement, House Judiciary Committee, June 25, 2014, p. 3 [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2014june25_unaccompaniedalienminors_t.authcheckdam.pdf.

⁸¹ S. 744, Amt. 1340, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text>. See also The Young Center for Immigrant Children’s Rights, <http://theyoungcenter.org/news/historic-senate-bill-protecting-childrens-safety-in-immigration-legislation/>.

⁸² USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children’s dockets in immigration court, with specialized training for judges. USCCB HJC Testimony at 11-12; National Immigrant Justice Center (NIJC), *Statement, House Judiciary Committee, June 25, 2014*, at 8, <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf>. S. 744 would also institute a multi-year program to ensure “safe and sustainable repatriation.” S. 744, Sec. 3612 (j), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>.

⁸³ Appleseed Foundation, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>. As one organization put it, children “do not divulge their complex histories of abuse and neglect during a first meeting with strangers,” let alone “armed strangers in uniform.” Center for Refugee and Gender Studies,

Calling on President Obama to Protect Child Migrants, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), <http://cgrs.uchastings.edu/our-work/june-2014-policy-statement-children>.

Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, “Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers.... That’s not our job.” David Nakamura, Border agents decry ‘Diaper Changing, Burrito Wrapping’ with influx of children, *Washington Post* (June 20, 2014), at http://www.washingtonpost.com/politics/border-agents-decry-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

⁸⁴ S. 744, Sec. 3611 (requiring training by child welfare professionals of CBP officials “likely to come into contact with unaccompanied alien children”), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3611.html>; Sec. 1115(c) (requiring training on preserving children’s best interests), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>. See also *Women’s Refugee Commission, Halfway Home: Unaccompanied Children in Immigration Custody* (Feb. 2009), p. 2; *American Immigration Lawyers Association (AILA)*, Testimony, House Judiciary Committee, June 25, 2014, p. 6, <http://www.aila.org/content/default.aspx?docid=49015>.

⁸⁵ S. 744, Sec. 3612(d), (e), “Child Trafficking Victims Prevention Act” (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), at <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>; USCCB, HJC Testimony, p. 10.

⁸⁶ Lutheran Immigration and Refugee Service (LIRS), Testimony, House Judiciary Committee, June 25, 2014, p. 2.

⁸⁷ Appleseed Foundation, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, 2011, at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

⁸⁸ Conversely, USCCB and other organizations have stated that “subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights.” USCCB, HJC Testimony, p. 10.

⁸⁹ S. 744, Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and particularly vulnerable), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3502.html>. H.R. 15, the House comprehensive reform bill, is similar. H.R. 15, Sec. 3502, <https://beta.congress.gov/bill/113th-congress/house-bill/15/>. H.R. 4936, the Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others, would provide counsel to unaccompanied children and the mentally disabled. <https://beta.congress.gov/bill/113th-congress/house-bill/4936>; Richard Simon, “Lawmakers seek legal aid for youths caught crossing Southwest border,” *Los Angeles Times*, June 23, 2014. Those bills would not, however, provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, at 12 (“Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors”). See also e.g. USCCB, HJC Testimony, p. 12; *American Immigration Lawyers Association (AILA)*, Statement, House Judiciary Committee, June 25, 2014, p. 6; NIJC HJC Statement, pp. 5-7; ABA HJC Statement, p. 3.

Particularly, children fleeing abuse and violence are often not

capable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony at p. 11. Organizations have also reported that counsel assists in ensuring children attend court proceedings. Safe Passage Project, Testimony, House Judiciary Committee, June 25, 2014, at p. 2 (“Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel.”), <http://www.safeassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/>.

The Administration has proposed \$2 million for a “justice AmeriCorps” program of pro bono lawyers. Organizations have called it a “step in the right direction,” but “not adequate to meet overwhelming need.” NIJC HJC Statement at 6 (“given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.”) The Senate’s Commerce, Justice and Science Appropriations bill, if passed, would also provide \$5.8 million for a pilot program for lawyers for unaccompanied children. Senate Appropriations Committee, *FY15 Minibus Text: CJS, THUD & Agriculture*, Amt. 3244 to H.R. 4660, p. 24, <http://www.appropriations.senate.gov/news/fy15-minibus-text-cjs-thud-agriculture>.

⁹⁰ Organizations have also recommended increasing Legal Orientation Program funding, to provide know-your-rights presentations to all detainees nationwide. AILA HJC Testimony, at 6; Human Rights First, *How to Manage the Increase in Families At the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>. S. 744 and H.R. 15 would provide this. S. 744, Sec. 3503, <http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html>; H.R. 15, Sec. 3503.

⁹¹ Organizations have recommended additional resources to backlogged immigration courts, even before the recent children’s crisis. Currently, an immigration case has been pending for 578 days on average (over a year and a half), and in Los Angeles, 799 days (over two years). Transactional Records Access Clearinghouse (TRAC), http://trac.syr.edu/phptools/immigration/court_backlog/. S. 744 and H.R. 15 would add 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. Sec. 3501(a). The Senate 2015 CJS Appropriations bill under consideration contains an extra \$17 million to hire 35 new immigration judges. S. Amt. 3244 to H.R. 4660, p. 24, <http://www.appropriations.senate.gov/news/fy15-minibus-text-cjs-thud-agriculture>; S. Rep. 113–181, p. 63. The House’s CJS Appropriations bill, which passed, does not. H.R. 4660, pp. 22-23, <http://beta.congress.gov/113/bills/hr4660/BILLS-113hr4660rh.pdf>. Neither S. 744 nor H.R. 15, nor current Appropriations bills, include extra funding for USCIS asylum officers.

⁹² UNHCR *Detention Guidelines*, “Guideline 9.2, Children,” ¶¶ 51-57, 2012; WRC, *Halfway Home*;

⁹³ USCCB HJC Testimony, p. 11.

⁹⁴ More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. LIRS HJC Statement at 1; USCCB HJC Testimony at 13; WRC, *Halfway Home*.

⁹⁵ UNHCR *Detention Guidelines*, ¶ 52.

⁹⁶ Groups have particularly criticized conditions in Border Patrol’s short-term detention facilities. Silkenat, ABA Statement at 2; AILA HJC Statement, at 5; WRC, *Halfway Home*, at 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shacking, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU,

Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention, June 11, 2014, <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against Border Patrol officials from custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in “no action taken”), <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

Several legislative proposals have been introduced to address short-term CBP detention conditions. These include H.R. 3130, the Protect Family Values at the Border Act, introduced by Rep. Lucille Roybal-Allard (D-CA), <http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3130>; Amendment 1260 to S. 744, introduced by Sen. Barbara Boxer (D-CA), <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1260/text>. Additionally, H.R. 4303, the Border Enforcement Accountability, Oversight, and Community Engagement Act of 2014, introduced by Rep. Steve Pearce (R-NM) and Rep. Beto O’Rourke (D-TX), would establish an ombudsman over border-related concerns. <https://beta.congress.gov/bill/113th-congress/house-bill/4303/>.

⁹⁷ S. 744, Sec. 3715 (establishing “secure alternatives programs that incorporate case management services,” with “nongovernmental community based organizations”); Human Rights First, *How to Manage the Increase in Families At the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>; LIRS HJC Statement, at 2.

Currently, the House DHS appropriations bill recommends \$94.5 million for alternatives to detention (compared to \$2.01 billion for detention overall). H.R. 4903, <http://www.gpo.gov/fdsys/pkg/CCAL-113hcal/html/CCAL-113hcal-pt2.htm>; see also H. Rept. 113-481, p. 58. The Senate DHS Appropriations bill recommends \$94 million for alternatives to detention (compared to \$1.87 billion for detention overall). S. 2534, at <https://beta.congress.gov/bill/113th-congress/senate-bill/2534/text>; See also Senate Appropriations Committee, *Committee Approves FY15 Homeland Bill* (June 26, 2014), at <http://www.appropriations.senate.gov/news/committee-approves-fy15-homeland-bill>.

⁹⁸ Detention Watch Network, *Advocates Denounce @BarackObama for Seeking \$2 Billion to Detain & Deport Women & Children on the Border*, July 1, 2014, at <http://detentionwatchnetwork.wordpress.com/2014/07/01/advocates-denounce-barackobama-for-seeking-2-billion-to-detain-deport-women-and-children-on-the-border/>; Council on Foreign Relations, Jeb Bush and Thomas F. McLarty III, Chairs, *Independent Task Force Report No. 63, U.S. Immigration Policy*,” p. 106-107 (July 2009).

⁹⁹ USCCB, HJC Testimony, pp. 13-15.

¹⁰⁰ USCCB, HJC Testimony, pp. 12, 14.

¹⁰¹ 22 U.S.C. § 7105(a). It requires the “Secretary of State and the Administrator of the United States Agency for international development” to “establish and carry out initiatives in foreign countries...in cooperation and coordination with relevant organizations, such as the United Nations High Commissioner for Refugees, the International Organization for Migration, and private nongovernmental organizations...for--”(i) increased protections for refugees and internally displaced persons, including outreach and education efforts to prevent such refugees and internally displaced persons from being exploited by traffickers; and (ii) performance of best interest determinations for unaccompanied and separated children who come to the attention of the United Nations High Commissioner for Refugees, its partner organizations, or any organization that contracts with the Department of State in order to identify child trafficking victims and to assist their safe integration, reintegration, and resettlement.”