

CALIFORNIA SENATE OFFICE OF RESEARCH

JULY 11, 2014

FEDERAL UPDATE

UNACCOMPANIED MINORS: A CRISIS AT THE U.S. BORDER

KEY FACTS

- **So far this federal fiscal year, U.S. Customs and Border Protection has** apprehended approximately 52,000 unaccompanied minors at the U.S. border, and federal authorities predict a total of at least 90,000 unaccompanied minors to be apprehended by the end of September 2014.
- **This upsurge in unaccompanied minors has created a need for more housing** and legal services.
- **About 76 percent of the apprehended unaccompanied minors are from** Honduras, El Salvador, and Guatemala; the remaining 24 percent are from Mexico.
- **In federal fiscal year 2013, 73 percent of the unaccompanied minors were** males and 27 percent were female; 76 percent were 14 years of age or older.
- **The average length of stay in immigration detention facilities was 61 days** between federal fiscal years 2008 and 2010; as of May 2014, the reported average stay was approximately 35 days.
- **Many of the United States' laws and procedures related to unaccompanied** minors were developed to protect children from human trafficking and other threats of violence.
- **Immigration cases involving unaccompanied minors are focused on the welfare** of the children, rather than detention, and the U.S. Department of Health and Human Services must place the children in the "least restrictive setting" possible.
- **Unaccompanied minors from Mexico and Canada may elect to return to their** country of origin when apprehended at the border or when they enter the U.S. immigration system and, thus, they are not automatically taken into U.S. custody.
- **Unaccompanied minors from noncontiguous countries are taken into custody,** and are then subject to immigration proceedings and potential deportation.

An unprecedented number of unaccompanied minors from Central America have migrated into the United States at the Mexican border, creating what is being called a “humanitarian crisis” and requiring immediate action by the Obama administration and Congress. According to U.S. Customs and Border Protection, the U.S. government has apprehended approximately 52,000 unaccompanied minors so far this federal fiscal year, and federal authorities expect at least 90,000 by the end of September 2014. By the end of May 2014, the border patrol had apprehended more unaccompanied minors than in any of the preceding five years, and almost twice as many unaccompanied minors as in federal fiscal year 2012. Although unaccompanied minors have been entering the United States through the southwest border for years, the surge in the last several months has overloaded U.S. Border Patrol stations and detention facilities.

WHO ARE UNACCOMPANIED MINORS?

Four countries account for almost all of the unaccompanied minors’ cases: El Salvador, Guatemala, Honduras, and Mexico. In federal fiscal year 2009, unaccompanied minors from Mexico accounted for 83 percent of the 19,440 apprehensions, while the other three Central American countries accounted for a combined 17 percent. The proportions have since shifted: as shown in the table below, in the first eight months of federal fiscal year 2014 (October 1, 2013 through June 15, 2014), unaccompanied minors from Mexico made up only 24 percent of the apprehensions, while the three Central American countries made up a combined 76 percent.

Unaccompanied Minors Apprehended by U.S. Border Patrol						
Country of Citizenship	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014*
Honduras	968	1,017	974	2,997	6,747	15,027
Guatemala	1,115	1,517	1,565	3,835	8,068	12,670
El Salvador	1,221	1,910	1,394	3,314	5,990	11,436
Mexico	16,114	13,724	11,768	13,974	17,240	12,146
TOTAL	19,418	18,168	15,701	24,120	38,045	51,279

*As of June 15, 2014

Source: U.S. Department of Homeland Security, June 2014;

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

In federal fiscal year 2013, 73 percent of apprehended unaccompanied children were males and 27 percent were female; 76 percent of these children were 14 years of age or older. However, there has been a recent increase in the apprehension of minors under the age of 13 years.

FRAMEWORK OF CURRENT IMMIGRATION LAW

In the Homeland Security Act of 2002, the statutory definition for “an unaccompanied alien child” is one who:

- lacks lawful immigration status in the United States
- is under age 18
- is without a parent or legal guardian in the United States, or
- has no parent or legal guardian in the United States available to provide care and physical custody

In accordance with a 1997 settlement agreement in the federal class-action lawsuit *Flores v. Meese*, the U.S. Department of Homeland Security and U.S. Department of Health and Human Services (HHS) are required to meet certain obligations related to unaccompanied minors. The *Flores Settlement Agreement* established a nationwide policy for the detention, treatment, and release of unaccompanied minors, recognizing their particular vulnerability due to age. Per *Flores*, federal authorities are required to release children from immigration detention to approved sponsors without unnecessary delay, place them in the “least restrictive setting” appropriate for their age and special needs, and implement standards relating to the care and treatment of children in immigration detention.

In the past, the United States routinely tried to deport unaccompanied children caught at the border since they had very few legal protections. That policy changed with the implementation of the Homeland Security Act of 2002, which transferred the care and custody of unaccompanied minors from the former U.S. Immigration and Naturalization Service (INS) to HHS, with a focus toward a child-welfare-based model of care rather than an adult-detention model. Within HHS’s Administration for Children and Families, the Office of Refugee Resettlement (ORR) administers programs and services for children referred by immigration authorities.

The Federal Trafficking Victims Protection Reauthorization Act of 2008 was approved by Congress; it expanded and redefined HHS’s statutory responsibility by adding additional protections for unaccompanied minors, including access to legal services and safe repatriation to their country of origin. The act also gave HHS the authority to appoint advocates for immigrant children to help victims of human trafficking

and other vulnerable unaccompanied minors, and it established special rules for unaccompanied minors from contiguous countries, allowing them (under certain circumstances) to return to Mexico or Canada without additional penalties.

THE PROCESS

The complex process by which an unaccompanied minor moves through the U.S. immigration system begins at the time the child is apprehended by federal authorities on suspicion of violating immigration law. Procedures for children from contiguous countries are different than for those from noncontiguous countries. The most important difference: Children from Mexico and Canada – when they are apprehended at the border or enter the U.S. immigration system – immediately may elect to return to their country of origin. Most of these children choose to return home.

Unaccompanied Minors From Noncontiguous Countries

An unaccompanied minor from a noncontiguous country attempting to enter the United States automatically is placed into custody by the U.S. Department of Homeland Security (DHS); most are apprehended by U.S. Border Patrol agents at or near the border.

Federal authorities place the child in a temporary detention facility, making sure he or she is not housed with unrelated adults. DHS determines if the person is younger than 18 years of age and unaccompanied. DHS also has the authority to release an unaccompanied minor to a parent or other adult relative if one can be located; however, due to fear of deportation, undocumented family members may be reluctant to come forward. If a relative is not located, an unaccompanied minor must be transferred to an ORR intake facility within 72 hours of determination that the minor is unaccompanied. ORR is responsible for the care and custody of minor children while their immigration status is considered. Once a child is transferred to ORR custody, DHS continues its role in immigration proceedings.

Most children in ORR custody receive care and services through a network of local private and/or nonprofit providers and governmental juvenile-justice agencies. As of July 2011, approximately 50 facilities funded by ORR were operating in more than a dozen states, including Arizona, California, Florida, Illinois, New York, Texas, and Virginia. Pursuant to the *Flores Settlement Agreement*, all of these facilities must provide children with services, including a classroom education, vocational training, health care, mental health services, recreational activities, and case management. When possible, these facilities must also offer assistance with family reunification. The state-licensed

ORR-funded care providers also work to enable the unaccompanied minors' releases to family members or other sponsors after an investigation has been conducted. Immigration proceedings continue even after unaccompanied minors are placed with parents or relatives.

Of the children served by ORR, approximately 85 percent are reunified with their families in the United States while awaiting the outcome of the immigration process. Between federal fiscal years 2008 and 2010, the average length of stay in ORR care was 61 days; total time in custody ranged from less than one day to 710 days. As reported in May 2014 by ORR, the average stay for an unaccompanied minor in its facilities was close to 35 days.

Unaccompanied Minors From Mexico and Canada

Because federal law is different for youths from contiguous countries under the Federal Trafficking Victims Protection Reauthorization Act (TVPRA), different rules apply to unaccompanied minors from Mexico and Canada. When apprehended by federal authorities, unaccompanied minors from Mexico are provided with a notice of rights and a request for disposition (Form I-770), which allows them either to request a hearing before an immigration judge or elect to return immediately to Mexico.

The vast majority elect to go back through the voluntary return process. The TVPRA requires children from contiguous countries to be screened within 48 hours of being apprehended. If U.S. Border Patrol agents determine an unaccompanied minor may be a victim of human trafficking or may face danger upon return to his or her country of origin, the child is turned over to HHS to undergo a process similar to the process for unaccompanied minors from noncontiguous countries.

CAUSES

There are differing opinions about the root cause for the increasing number of immigrant children crossing the border. The issue has become part of the nationwide political debate, and some have blamed failed immigration policies, while others point to misinformation perpetrated by smugglers or guides (often referred to as coyotes) who are charging a fee to transport children to the border. In some cases, these children are fleeing violence from gangs and drug cartels, and many live in poverty and seek to escape to the United States in hope of new opportunities and a better life.

A recent study by the United Nations High Commissioner for Refugees found that 48 percent of the displaced children interviewed were escaping from drug cartels, gang activity, and other organized armed crime. Others were attempting to reunite

with family already in the United States. In many cases these minors crossed mountains and deserts and faced unknown dangers and potential harm along their journey.

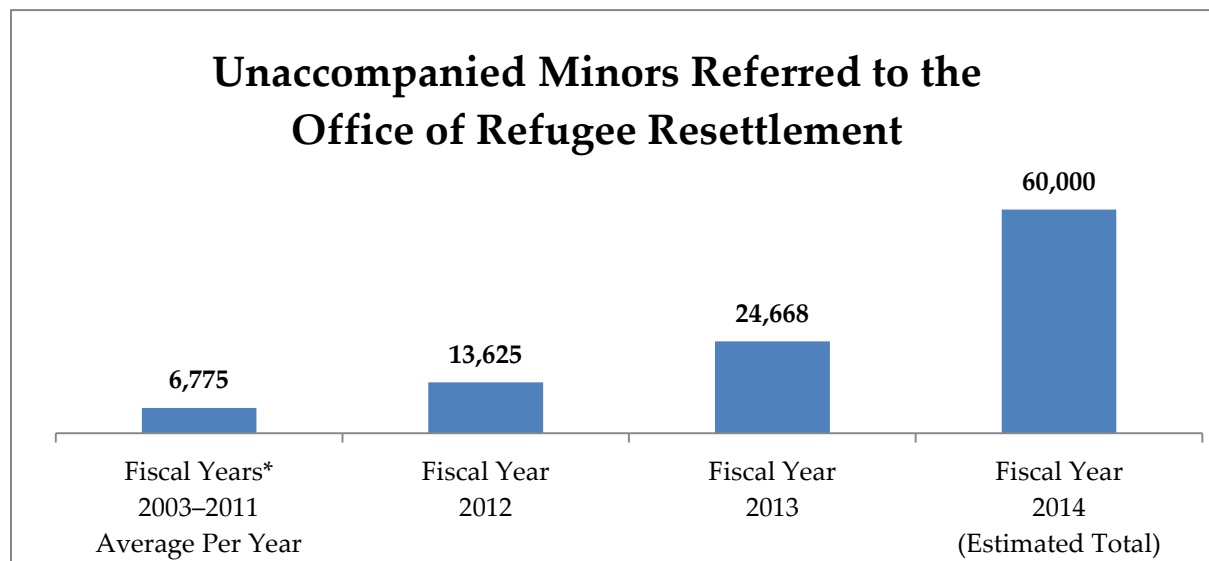
NEW DEVELOPMENTS

Housing

Housing the massive influx of unaccompanied minors is an immediate and pressing challenge that starts once minors are apprehended by DHS and continues when they are placed in ORR custody. Upon apprehension, detained minors (sometimes with their families) are transported to short-term detention facilities. Federal agencies lack the proper infrastructure to deal with the growing demand for temporary housing. As a result, the use of several emergency or temporary locations has been proposed, and detainees have been transported to detention centers in other states.

In early June 2014, for example, at least 1,000 unaccompanied minors were transferred from Texas to a facility in Nogales, Arizona. Communities are not always accepting of these efforts: on July 1, 2014, federal authorities attempting to bus migrant families to a facility in Murrieta, California, were blocked by protesters waving American flags. The bus eventually was rerouted to another shelter in the San Diego area.

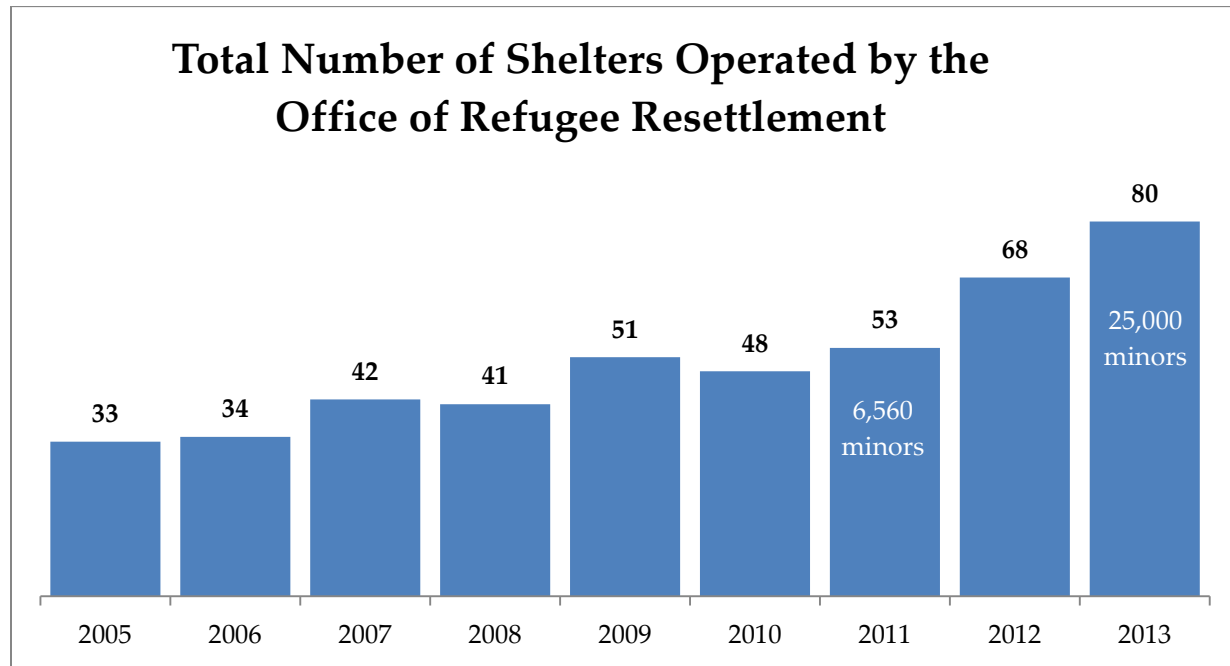
Once minors are placed in ORR custody, the need for housing and other services remains. The chart below shows the increase in the number of minors referred to ORR in recent years.



**All fiscal years are federal*

Source: U.S. Department of Health and Human Services, Office of Refugee Resettlement

This increase in referrals is attended by a heightened need for housing. Recent data show that ORR was operating 53 shelters that housed 6,560 minors in federal fiscal year 2011. In 2013 there were 80 shelters housing approximately 25,000 minors. The chart below shows the increase in ORR-operated shelters between 2005 and 2013.



Source: "70,000 Kids Will Show Up Alone at Our Border This Year. What Happens to Them?"
Mother Jones, July/August 2014

To address the need for longer-term housing as family placements for unaccompanied minors are sought, HHS reached out to the U.S. Department of Defense (DOD) for assistance with locating more accommodations. DOD has made available facilities at Lackland Air Force Base in San Antonio, Texas; the Naval Base at Port Hueneme in Ventura County, California; and Fort Sill Army Base near Lawton, Oklahoma. HHS also has proposed several emergency or temporary locations to help with the volume of incoming unaccompanied minors; however, some of the proposed sites have been met with community protests. For example, in California, the City of Escondido's Planning Commission recently voted 7-0 to reject an HHS plan to convert an abandoned nursing facility into a shelter for some unaccompanied minors.

Legal Services

The U.S. Department of Justice's Executive Office of Immigration Review is responsible for adjudicating immigration cases, including immigration hearings. This federal office has specific policies and guidelines for conducting the "removal hearings" of

unaccompanied minors to ensure the children have appropriate assistance and understand the nature of the proceedings.

A report by the Vera Institute of Justice, an independent, nonpartisan, and nonprofit center for justice policy and practice, concluded that in 2010, 40 percent of the unaccompanied minors surveyed were potentially eligible for some type of immigration relief (such as special immigrant juvenile status, asylum, or visas for crime victims). And a report published in March 2014 by the Office of the United Nations High Commissioner for Refugees concluded that nearly 60 percent of children arriving from Mexico and Central America to the United States might qualify for some type of humanitarian protection under international law.

Under a U.S. Justice Department program launched in June 2014, 100 attorneys and paralegals were sent to provide legal services to unaccompanied minors in ORR's custody; however, those legal resources are inadequate for assisting the large volume of pending cases.

On June 23, 2014, a group of U.S. House Democrats introduced federal legislation that, if passed, would provide legal representation to unaccompanied minors and individuals with mental disabilities during their immigration proceedings. H.R. 4936—also known as the Vulnerable Immigration Voice Act—is authored by U.S. Representatives Lucille Roybal-Allard, Hakeem Jeffries, Judy Chu, and Karen Bass. The legislation is pending.

On July 9, 2014, a coalition of immigration advocacy groups brought a class-action lawsuit against the federal government on behalf of eight named unaccompanied minors, stating that their failure to provide legal representation during immigration proceedings is in violation of the U.S. Constitution's Fifth Amendment Due Process Clause and the Immigration and Nationality Act's provision requiring a "full and fair hearing" before an immigration judge. The lawsuit argues that children are not equipped to represent themselves in serious cases that can determine their future, as they lack the intellectual and emotional capacity of adults as well as the knowledge of legal remedies that may be available to them; the lawsuit seeks an injunction to halt all deportation proceedings for minors until they are guaranteed attorneys.

OBAMA ADMINISTRATION PROPOSALS

In late June 2014 the Obama administration unveiled measures to handle the surge of undocumented immigrants entering the United States—particularly unaccompanied children—by improving enforcement efforts and partnering with Central American countries to combat gang violence, strengthen citizen security, spur economic

development, and improve capacity to receive and reintegrate families and children returning to their countries of origin. The plan includes almost \$100 million in aid to the Central American governments of El Salvador, Guatemala, and Honduras.

On July 8, 2014, President Obama sent a letter to Congressional leaders outlining his administration's current efforts to address the humanitarian crisis and asking for additional authority and emergency appropriations totaling approximately \$3.7 billion. These emergency funds would be used to help deter border crossings, increase border enforcement, provide additional detainment facilities for unaccompanied children while they are in DHS custody, hire additional immigration judges, and allow HHS to provide more care for unaccompanied minors, including the urgently needed housing and medical care.

Prepared at the request of Senator Ricardo Lara, Chair, California Latino Legislative Caucus

Written by Norma Loza. The California Senate Office of Research is a nonpartisan office charged with serving the research needs of the California State Senate and assisting Senate members and committees with the development of effective public policy. It was established by the Senate Rules Committee in 1969. For more information and copies of this report, please visit www.sen.ca.gov/sor or call (916) 651-1500.

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