



County of Santa Clara
Office of the County Executive

72957

DATE: August 5, 2014
TO: Board of Supervisors
FROM: Jeffrey V. Smith, County Executive
SUBJECT: Report on Unaccompanied Immigrant Minors

RECOMMENDED ACTION

Consider recommendations relating to unaccompanied immigrant minors. (Office of the County Executive)

Possible action:

- a. Accept report.
- b. Authorize County staff to proceed with necessary efforts to implement a local "host family" program which will help with the current humanitarian crisis of unaccompanied immigrant minors, including:
 - i. More clearly define the service model in partnership with stakeholders.
 - ii. Obtain necessary Federal and State approvals, and financial commitments, for the program.
 - iii. Recruit "host families" with an effective communication plan and prepare them for placement.
 - iv. Determine logistics required to transport and place children in Santa Clara County.
 - v. In conjunction with the Office of Refugee Resettlement, develop an effective reunification program for the children;
 - vi. Develop performance metrics and a dashboard to demonstrate effectiveness of the program.
- c. Authorize County Counsel to take actions necessary to help provide legal representation for these children.
- d. Report progress to the Children, Seniors, and Families Committee on a regular schedule.

Fiscal Impact

By accepting this report, there would be no fiscal implication. However, if the Board takes the recommended action, we can reasonable expect future costs of approximately \$200,000 in order to develop contract needed to effectuate this plan, and a cost of approximately \$2,000 per child per month for placement. These costs are within current spending authority and are merely initial estimates. We will return to the Board with firm numbers when we have them. We could reasonably expect approximately 50 children assigned to us and expect that some or all of these costs will be paid by the Federal government.

Child Impact

The recommended action will provide some support to unaccompanied immigrant minors and will have no negative effect upon resident children in Santa Clara County

Senior Impact

The recommended action will have no/neutral impact on seniors.

Sustainability Impact

The recommended action will have no/neutral impact on sustainability.

Reasons for Recommendations

During the Public Comment portion of the July 15, 2014 meeting of the Board of Supervisors, the Honorable Congresswoman Zoe Lofgren expressed her concern about the plight of the unaccompanied immigrant minors at the border. She had just returned from a visit to the shelters and described a humanitarian crisis of great proportions.

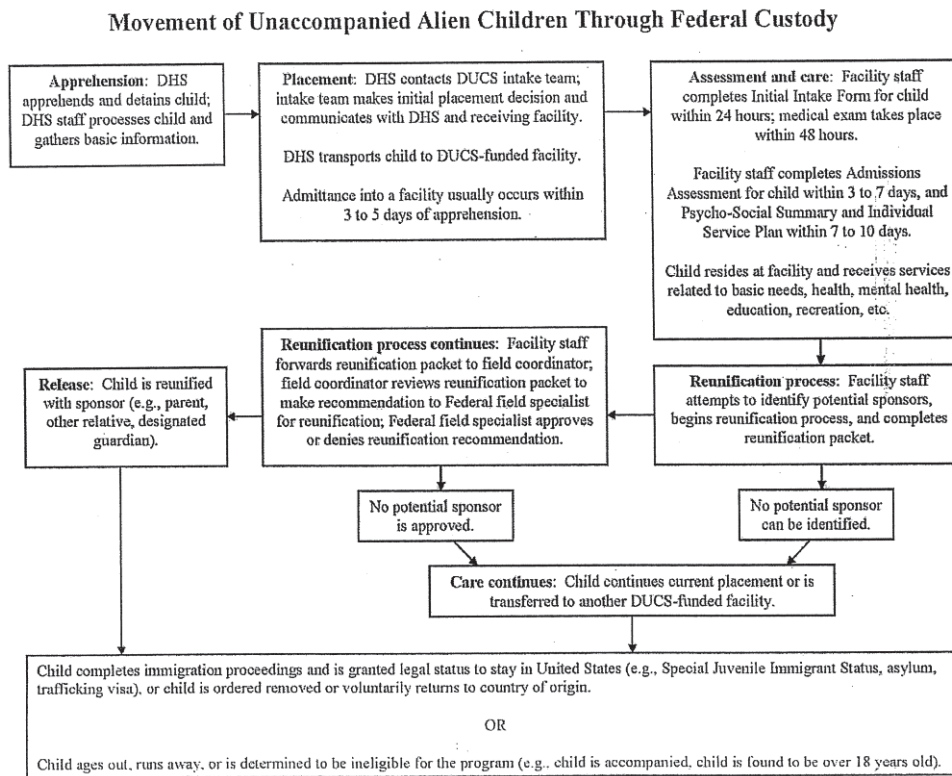
At this time, the Congresswoman asked County staff to explore possible options for the County to address this crisis. County staff expressed the willingness and intent to develop such a plan in conjunction with our community partners.

A very productive administrative meeting was held with stakeholders on July 22, 2014. During that meeting, we reviewed the current efforts being suggested to deal with this crisis and the current processes used by the ORR. The attendees developed an initial plan for a local effort to address the issue from a humanitarian perspective. Attendees were assigned specific tasks and we agreed to reconvene in two weeks in order to assess progress and clearly firm up the plan.

Early consensus was developed that “warehousing” was neither a desirable nor humane approach. The group suggested a “host family” model. This model would be similar to an exchange student model in which children would be evaluated and place in homes primarily for support, housing, and daily care. This is NOT a foster family model in that the families of these children have not relinquished parental rights and their cases are pending in immigration court, not juvenile court. We will not interfere with the foster care system or utilize resources needed for that population of children.

Below is a current model of processing which is used by ORR for unaccompanied minors. Near the bottom of the chart you will note that some children, without an approved sponsor, are placed into so-called DUCS facilities (i.e., approved by the Division of Unaccompanied Children’s Services). Our group believes that, for this crisis, we should strive to intervene

near the beginning of the process—names as “Placement” in the chart below. Our model would not substitute for the required Federal processes. It would merely provide a humane placement while those processes move forward.



Background

Over the last few years, the US has seen a rapid increase in the number of unaccompanied, and undocumented minors attempting to cross the border. In the last two years, the numbers have overwhelmed the typical processes used to evaluate these children and determine an ultimate placement for them. Given this reality, and many other concerns, immigration reform has been discussed widely in the last few years. However, to date, no significant reform that will ameliorate this problem has been adopted.

The Refugee Act of 1975, the last attempt at a comprehensive approach to immigration, created the Office of Refugee Resettlement as a federal vehicle to provide children and families with the services needed to integrate into US society. ORR is now charged with the responsibility to deal with the massive influx of unaccompanied minors, using outdated methods and processes that cannot currently deal with the huge numbers of children.

In the past, these children were housed in temporary shelters while awaiting required legal processing. Despite the paucity of Immigration Courts and specialized attorneys, the waits in these facilities were not extremely long and children were provided with sufficient legal representation.

For example, in fiscal 2011, ORR housed 6,560 kids in shelters. This was before the current huge influx started. Each shelter housed approximately 125 children. After the influx began in 2013, there were only 80 shelters available. That number of shelters could be reasonably expected to provide care for approximately 10,000 children for a short time period. However, at that point, there were nearly 25,000 unaccompanied children in need, and the shelter time was increasing due to overwhelmed Immigration Courts.

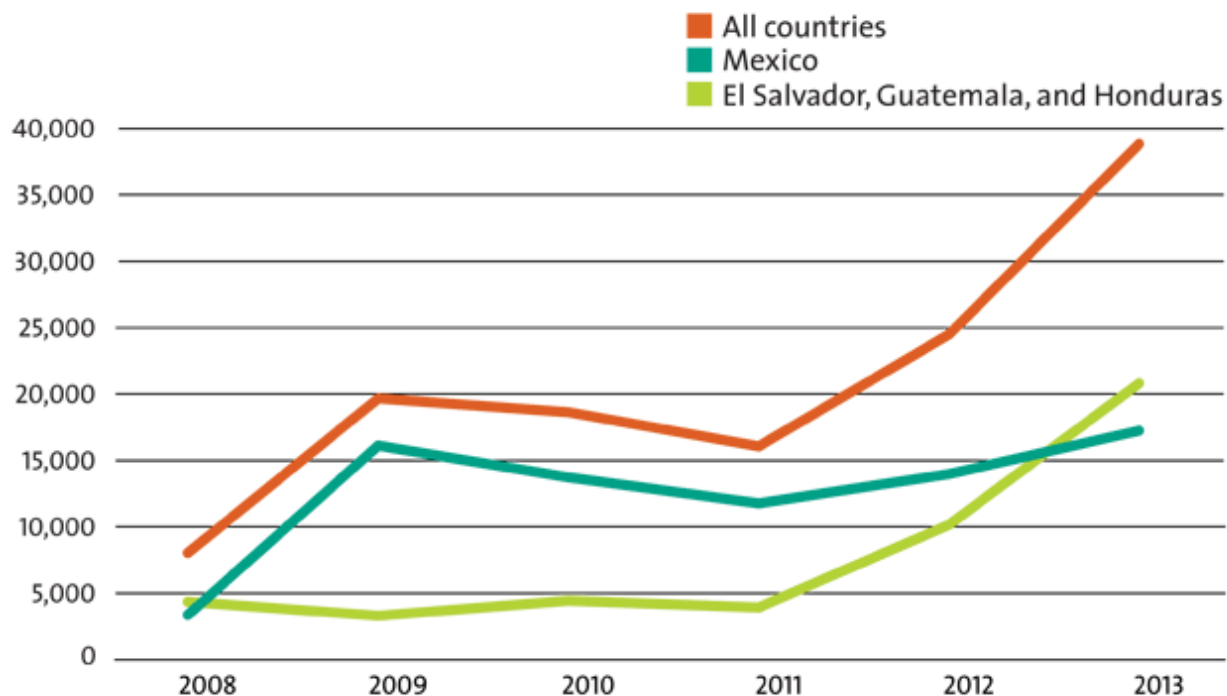
With this surge, the feds temporarily put hundreds of kids in emergency military dormitories. The facility were akin to emergency FEMA shelters, and were very crowded. With few other options, ORR has continued to use similar large shelters that were never designed to house large numbers of children of many ages and over different genders.

The problem only continues to worsen and options for solutions decrease. In the last 8 months, estimates suggest that a minimum of 57,000 new children have entered the system without a parent or guardian. Officials are expecting another 74,000 within the next year.

The trajectory of need is dramatic. This chart was compiled by Mother Jones for a recent article;

The Child Migrant Surge

Unaccompanied children caught at the US border, 2008-13



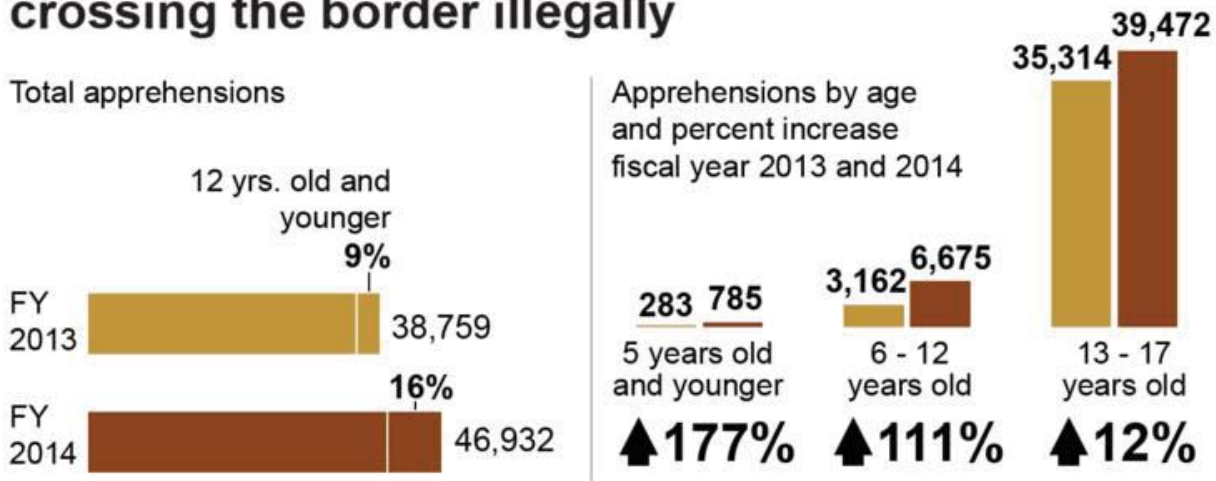
Source: US Customs and Border Patrol

Mother Jones

Possibly more troublesome than the total numbers of children in need is the proportionately more dramatic increase in very young children. These children have more special and critical needs than the older children who can, at least, do some self-care and hygiene on their own.

Research done by the Pew Foundation and described in the L.A. Times shows this distribution problem:

Ages of unaccompanied children caught crossing the border illegally



Fiscal year 2013 is Oct. 1, 2012 - Sept. 30., 2013; Fiscal year 2014 is Oct. 1, 2013 - May 31, 2014.

Source: Pew Research Center, Enforcement Integrated Database records

@latimesgraphics

The same research demonstrates that the increases in children at the border, and particularly the younger children, come from different countries than the previous populations. This reality, and the fact that they come for different reasons, makes reunification and communication with family much more difficult.

International estimates suggest that 58 percent of these children travelled to the US in order to escape significant risk of harm and would qualify for asylum. The types of risk include, among other causes--torture, human trafficking, enslavement to drug cartels, and gang activity.

Despite the obvious and extreme need to address the situation effectively, the Federal government has been unable to allocate sufficient funding needed and to modify the immigration policies and processes required in this emergency.

By all measures, this situation is a humanitarian crisis of enormous proportions and it will only worsen.

Consequences of a Negative Action

Santa Clara County will not participate in an effort to alleviate the humanitarian crisis at the US border.

ATTACHMENTS:

- Immigration Options for Undocumented Immigrant Children (PDF)
- The Rights of Children in the Immigration Process (PDF)
- Step-by-Step Guide on Apprehension and Detention of Juveniles in the United States (PDF)



Immigration Options for Undocumented Immigrant Children

July 2013

A collection of fact sheets on:

**Special Immigrant Juvenile Status (SIJS)
Violence Against Women Act (VAWA)**

U Visa

Trafficking Visa

Asylum

Temporary Protected Status (TPS)

Family Visas

Conditional Permanent Residence

Deferred Action for Childhood Arrivals (DACA)

Note: Advocates should only use these fact sheets for quick reference.
For additional information and/or assistance,
please see the Immigration Resources section at the back of this packet.

Immigrant Legal Resource Center
www.ilrc.org

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis in state law.

What are the benefits of Special Immigrant Juvenile Status (SIJS)?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a "green card).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

Who is eligible for SIJS?

A child who is under the jurisdiction of a juvenile court or has been legally committed to the custody of a state agency, department, entity, or individual by such court, where the court has found (a) that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law, and (b) that it would not be in the child's best interest to be returned to the home country. "Juvenile court" is a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. The Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA) broadened and clarified who is eligible for SIJS, although some ambiguities remain as the regulations have not been updated.

What are the requirements for SIJS?

1. The juvenile court must declare the child to be a court dependent, must legally commit the child to a state department or agency, or must legally commit the child to the care of an individual or entity appointed by a state or juvenile court in the United States, including children in dependency, delinquency, custody, guardianship, or adoption proceedings.
2. The SIJS application must include a special order signed by the juvenile court finding that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law. The court's order, or a social worker's statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect, abandonment or a similar basis in state law.
3. The juvenile court must find that it is not in the child's best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.
4. The child must be under 21 and unmarried. The child's age can be proven with a birth certificate, passport, or other official foreign identity document issued by a foreign government. The child can be a parent of his or her own children. SIJS cannot be denied based on age if the noncitizen was under 21 and unmarried on the date of the SIJS application. Until further guidance is provided, the juvenile court should retain jurisdiction over the case until the entire application is decided, unless jurisdiction is terminated solely due to age. If this is the case, the proceedings should indicate that they were terminated due to age.

For more information, order the ILRC's publication "Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth."

VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act permits certain abused family members of U.S. citizens or permanent residents to self-petition for a green card without the cooperation of the abuser.

What are the benefits of VAWA?

- Allows the abused family member to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the abused family member to work and serves as a government-issued identification card.
- Allows the abused family member to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

Who is eligible?

- An abused noncitizen child or spouse of a U.S. citizen or permanent resident parent.
- An abused noncitizen parent of a U.S. citizen.
- A child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse. In other words, a child can receive VAWA benefits even if he or she was not abused, as long as the child’s parent qualifies for VAWA due to abuse.

NOTE: Both male and female abused children (or spouses) are eligible to apply.

What are the requirements for VAWA?

1. The abusive family member is or was a U.S. citizen or lawful permanent resident.
2. The abused family member resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States.
3. The child or spouse qualifies as a “child” or “spouse” under immigration law.
 - For children, the child must be unmarried and under the age of 21. Includes step-children if the relationship was established before the child’s 18th birthday and adopted children if the adoption was finalized before the child’s 16th birthday and the child has been in the adoptive parent’s physical and legal custody for two years.
 - For spouses, the marriage must have been legal and valid in the location in which it took place.
 - There are some exceptions to these requirements.
4. The abused family member must be a person of “good moral character.”
5. The abuse must constitute battery or “extreme cruelty” which can include psychological or emotional abuse – the abused family member need not suffer *physical* abuse to be eligible.

*For more information, order the ILRC's publication
 “The VAWA Manual: Immigration Relief for Abused Immigrants.”*

U NONIMMIGRANT STATUS

U nonimmigrant status (the "U Visa") is for noncitizens who are victims of serious crimes and can be helpful in the investigation or prosecution of those crimes.

What are the benefits of U nonimmigrant status (also known as a "U visa")?

- The U visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the U visa-holder can apply to obtain lawful permanent residency (a "green card").
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a U visa to the eligible noncitizen and to certain other family members.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for the U visa?

1. The noncitizen must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, stalking or fraud in foreign labor contracting or attempt, conspiracy, or solicitation to commit these or similar offenses in violation of federal, state or local criminal law. In certain cases, where the direct victim is deceased due to murder or manslaughter or is incompetent or incapacitated, certain family members (if the direct victim is under 21 years of age) may also qualify for U nonimmigrant status.
2. The noncitizen has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. If the child is under 16 years of age, a parent, guardian or next friend of the child may fill this role.
3. The noncitizen must obtain certification from a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a USCIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. A Child Protective Services (CPS) agency may also certify the noncitizen's helpfulness if it has criminal investigative jurisdiction.

*For more information, order the ILRC's publication
"The U Visa: Obtaining Status for Immigrant Victims of Crime."*

TRAFFICKING VISA

T nonimmigrant status (the "T Visa") is for noncitizens who have been the victims of severe forms of human trafficking.

What are the benefits of a T Visa?

- The T visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the T visa-holder can apply to obtain lawful permanent residency (a "green card").
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a T visa to the eligible noncitizen and to certain other family members.

What are the requirements for the T visa?

1. The noncitizen must have been the victim of a severe form of human trafficking. Severe forms of human trafficking is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. This severe form of trafficking requirement may be proven by a certification by law enforcement, evidence that immigration authorities have arranged for the individual's continued presence in the United States as a victim of trafficking, or sufficient credible secondary evidence.
2. The noncitizen must be physically present in the United States, American Samoa, or the Commonwealth of North Mariana Islands, or at a port of entry on account of such trafficking.
3. The noncitizen must have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. Children and youth under 18 years of age, however, are exempt from this requirement.
4. The noncitizen would suffer extreme hardship involving unusual and severe harm upon removal.

Individuals who do not meet all the requirements for T nonimmigrant status may be eligible for U nonimmigrant status, VAWA relief, or even SIJS.

Identifying Trafficking Victims:

- Trafficking victims are often unlikely to self-identify or able to escape.
- They may not perceive themselves as victims.
- They may be working long hours, every day of the week and often live where they work.
- They may be more fearful of law enforcement than of their traffickers.
- They may be ashamed of what they have done.
- They may owe a debt to their traffickers.
- Their family members may have been threatened by the traffickers.

*For more information, order the ILRC's publication
 "Representing Survivors of Human Trafficking: A Promising Practice Handbook."*

ASYLUM

Asylum is for noncitizens who fear persecution in their home country because of their race, religion, nationality, political opinion or membership in a particular social group.

What are the benefits of asylum?

- Allows the noncitizen to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the noncitizen to work and serves as a government-issued identification card.
- Allows the noncitizen to travel outside the United States with a refugee travel document, but generally one cannot return to their home country.
- A person granted asylum can petition for spouse and children to enter as asylees.
- Allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for asylum?

1. Generally, a noncitizen must apply within one year of arriving in the United States unless he or she was prevented from applying by changed or extraordinary circumstances. Changes in home country conditions may constitute changed circumstances. Some forms of family abuse and domestic violence might be considered extraordinary circumstances. Status as a minor may also be considered a legal disability so as to qualify as an extraordinary circumstance. In addition, unaccompanied minors are exempt from the one-year bar. An unaccompanied minor is defined as an undocumented person under the age of 18 who does not have a parent or legal guardian who is willing or able to provide care and physical custody.

2. The noncitizen must have suffered persecution or fear persecution from the government of his or her home country or from a group or individual that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The persecution must be on account of the noncitizen’s race, religion, political opinion, nationality or membership in a social group.

4. The noncitizen must not be subject to certain mandatory bars to asylum. These include persecution of others, conviction of a particularly serious crime, commission of a serious non-political crime before coming to the U.S., posing a risk to U.S. security, engaging in terrorist activity, firm resettlement in a third country, or removal to a safe third country.

➔ In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as threat of female genital mutilation in the home country), even if the persecution and abuse was committed by family members.

Note: This form of relief is very complicated. Noncitizens who may qualify for asylum must consult with an expert immigration practitioner before applying.

*For more information, order the ILRC’s publication,
“Essentials of Asylum Law.”*

TEMPORARY PROTECTED STATUS

Noncitizens from certain countries that have experienced devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).

What are the benefits of Temporary Protected Status (TPS)?

- Provides *temporary* permission to stay in the United States.
- Provides temporary work authorization.

What are the requirements for TPS?

1. The noncitizen only needs to prove that he or she is a national of a current TPS designated country and has been in the United States since a required date.
2. The noncitizen does not need to prove that he or she will be singled out for persecution in the home country.
3. The noncitizen cannot be subject to one of the criminal (no conviction of any felony or two or more misdemeanors in the U.S.), security-related, or other bars to TPS.
4. The noncitizen has met all the requirements for TPS registration or re-registration as specified for the country including filing during the open registration or re-registration period, or meeting the requirements for late initial registration regardless of whether there is currently an open registration or re-registration period.

Which countries are currently designated for Temporary Protected Status?

The countries on the TPS list change. Recently they have included:

- El Salvador
- Haiti
- Honduras
- Nicaragua
- Somalia
- Sudan
- Note that Liberia was previously a TPS designated country, but is no longer. Now Liberians formerly granted TPS may be eligible for Deferred Enforced Departure, which is not an immigration status, but rather a designation in discretion of the President that eligible individuals are not deportable.

For updated information about which countries are currently designated TPS and what requirements nationals of those countries must meet to qualify, go to the USCIS website at www.uscis.gov/TPS.

For more information, order the ILRC's publication "[A Guide for Immigration Advocates](#)."

FAMILY VISAS

*Some noncitizens may be able to immigrate legally
through a U.S. citizen or lawful permanent resident family member.*

What are the benefits of immigrating through a family member?

A family visa permits a noncitizen to immigrate to the United States through a family member. To immigrate means to become a lawful permanent resident ("green card" holder).

Who is eligible to immigrate through a family member?

Children and youth who have certain qualifying family relationships with U.S. citizen (USC) or lawful permanent resident (LPR) family members may be eligible for family visas to obtain lawful status. They may qualify as **immediate relatives** if they are the spouse, unmarried child under 21, or parent (if the son or daughter is 21 years or older) of a U.S. citizen. These persons can immigrate quickly. Others may have to wait up to several years to immigrate. They may qualify to immigrate through the **preference categories** which includes sons or daughters of U.S. citizens who are married or over the age of 21; spouses and unmarried sons and daughters of permanent residents; and siblings of U.S. citizens where the citizen is 21 years or older. How long a family member will have to wait to immigrate through a family petition depends upon the noncitizen's native country and the relationship to the family member who submitted the visa petition. The family-based immigration application process generally involves two steps, filing of the family visa petition and then the adjustment of status application to become a lawful permanent resident. The second step can happen in the United States for some people that are already here. Others will have to consular process, meaning that they will have an interview at the consulate in their home country. Those that entered the United States without inspection often have to leave the U.S. to consular process, but this should be discussed with an attorney.

What are the requirements for immigrating through a family member?

1. The U.S. citizen or lawful permanent resident parent must prove his or her citizen or resident status and must prove the required family relationship with the noncitizen.
2. The U.S. citizen or lawful permanent resident family member must be willing to help the noncitizen through the process by attending immigration interviews and submitting an affidavit of support.
3. Some noncitizen family members will have to wait many years (approximately 4-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they may not be able to remain in the United States.

*For more information, order the ILRC's publication
"Families & Immigration: A Practical Guide."*

CONDITIONAL PERMANENT RESIDENCE

Conditional permanent residence is for noncitizens who have immigrated through a spouse within the first two years of the marriage. Because of immigration processing times, this is effectively only available to the spouses of U.S. citizens.

What are the benefits of Conditional Permanent Residence?

- Provides two years of resident status in the United States that may be extended to lawful permanent residence.
- Provides work authorization.

What makes this type of status “conditional?”

The conditional permanent resident and his or her spouse must apply together to remove the conditions on this residence within the 90 days prior to the second anniversary of being granted conditional permanent residence. If the conditional permanent resident does not do this, he or she may lose conditional permanent residence and be removed from the United States. If the conditional permanent resident does this successfully, he or she will become a lawful permanent resident (have a regular “green card”).

Are there any exceptions to the rule above?

Yes. There are waivers available to those conditional permanent resident spouses who cannot apply with the petitioning (U.S. citizen) spouse to have the conditions removed. In these cases, the conditional resident spouse may file the waiver on their own. They are available in the following situations:

- The conditional permanent resident spouse entered the marriage in good faith, but the petitioning spouse subsequently died.
- The conditional permanent resident spouse entered the marriage in good faith, but the marriage was later terminated due to divorce or annulment.
- The conditional permanent resident spouse entered the marriage in good faith, but has been battered or subjected to extreme cruelty by the petitioning spouse.
- The termination of permanent resident status and removal of the conditional resident spouse would result in extreme hardship to the conditional permanent resident spouse.

*For more information, order the ILRC’s publication
“Families & Immigration: A Practical Guide.”*

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Deferred Action is a form of prosecutorial discretion that provides a work permit and relief from removal for two years to certain eligible undocumented youth.

What are the benefits of Deferred Action for Childhood Arrivals (DACA)?

- Protects the youth from being placed into removal proceedings and from being removed.
- Provides an employment authorization document that allows the youth to work.
- Can obtain a Social Security Number.
- DACA can be renewed after two years.
- In certain states, a DACA-recipient can apply for a state identification card and a driver's license.

Who is eligible for DACA?

An undocumented youth that is currently living in the United States may be eligible for DACA. The youth can request DACA, even if they are currently in removal proceedings or have a final order of removal. If the youth is detained, he or she can also request DACA or ask to be released based on prima facie DACA eligibility.

What are the requirements for DACA?

A youth can request DACA if he or she:

1. Is at least 15 years old at the time of filing his or her request.
 - a. *Exception:* a youth that is currently in removal proceedings or has a final order of removal, or a voluntary departure order can request DACA under the age of 15.
2. Was under the age of 31 as of June 15, 2012;
3. Came to the United States before his or her 16th birthday;
 - a. *However,* if the youth has entered and left the United States before age 16, he or she will also have to show established residency in the U.S. before age 16.
4. Has continuously resided in the United States since June 15, 2007, up to the present time;
5. Was physically present in the United States on June 15, 2012, and at the time of making his or her request for DACA;
6. Entered without inspection before June 15, 2012, or his or her lawful immigration status expired as of June 15, 2012 (i.e. person was undocumented as of June 15, 2012);
7. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
8. Has not been convicted (as an adult) of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

*For more information, order the ILRC's publication
 "DACA: The Essential Legal Guide."*

IMMIGRATION RESOURCES

This list of resources is by no means exhaustive but provides some services available and national organizations willing to provide technical assistance and materials.

TECHNICAL ASSISTANCE PROVIDERS & PRO BONO SUPPORT

SPECIAL IMMIGRANT JUVENILE STATUS, VAWA AND U VISAS

Asista

2925 Ingersoll Ave., Suite 3
Des Moines, IA 50312
Tel. (515) 244-2469
questions@asistahelp.org
www.asistahelp.org

Asista's purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault. They provide free technical assistance and training to legal services providers that receive grant funding from the U.S. Department of Justice Office on Violence Against Women.

Immigrant Legal Resource Center (ILRC)

1663 Mission Street, Suite 602
San Francisco, CA 94103
T: (415) 255-9499
F: (415) 255-9792
www.ilrc.org

The ILRC provides technical assistance via Monday through Thursday from 10:00am to 3:00pm through its Attorney of the Day (AOD) service. This service is free to all California IOLTA-funded legal services programs, all San Francisco Bay Area nonprofit agencies, and Vera DUCS project subcontractors and pro bono attorneys assisting these subcontractors. To submit a question to our (AOD) service, please send an email to aod@ilrc.org and include your contract number.

National Immigration Project of the National Lawyers Guild

14 Beacon Street, Suite 602
Boston, MA 02108
Tel. (617) 227-9727
ellen@nationalimmigrationproject.org
www.nationalimmigrationproject.org

The Project provides technical assistance, advice and resources to its members. It sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

National Immigration Law Center (NILC)

3435 Wilshire Blvd., Suite 2850

Los Angeles, CA 90010

Tel. (213) 639-3900

Fax (213) 639-3911

www.nilc.org

NILC provides advice over the telephone and some training in the Los Angeles area. Special expertise in public benefits law and in T visas for victims of human trafficking. Also engages in impact litigation to defend fundamental and constitutional rights of low-income immigrants and their families. Also create toolkits to inform advocates and other organizations about changes to immigrant law.

ASYLUM

The Center for Gender and Refugee Studies

U.C. Hastings College of the Law

200 McAllister Street

San Francisco, CA 94102

Tel. (415) 565-4877

Fax (415) 581-8824

<http://cgrs.uchastings.edu/>

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

CHILDREN'S ISSUES

Public Counsel

601 South Ardmore Avenue

Los Angeles, CA 90005

Tel. (213) 385-2977

Fax (213) 385-9089

www.publiccounsel.org

Public Counsel provides legal services to immigrant children and youth in the Los Angeles area; advice over the telephone and some training available.

Immigrant Legal Resource Center

www.ilrc.org

July 2013

CLINIC National Pro Bono Project for Children

415 Michigan Ave. NE, Suite 200

Washington, DC 20017

Tel. (202) 635-2556

Fax (202) 635-2649

www.cliniclegal.orgnational@cliniclegal.org

CLINIC matches unaccompanied immigrant children who have recently been released from government custody with pro bono attorneys; trains and supports pro bono attorneys across the country to assist unaccompanied children in need of legal representation.

Kids in Need of Defense (KIND)

1300 L St., Suite 1100

Washington, DC 20005

Tel. (202) 824-8680

www.supportkind.orginfo@supportkind.org

KIND has an infrastructure of pro bono coordinators that assign, monitor, mentor and coordinate legal representation for unaccompanied minors provided by law firms and corporate legal departments in targeted cities. KIND also partners with NGOs with expertise in working with unaccompanied children.

National Center for Refugee and Immigrant Children

U.S. Committee for Refugees and Immigrants

2231 Crystal Drive, Suite 350, Arlington, VA 22202

Tel. (703) 310-1130

Fax (703) 769-4241

www.refugees.org/our-work/child-migrantsuscric@uscridc.org

The National Center provides pro bono legal and social services for unaccompanied immigrant children in the immigration process.

WRITTEN AND OTHER MATERIALS**Immigrant Legal Resource Center Publications**

The ILRC publishes the following books about areas of immigration law relevant to family and juvenile court issues. For a complete list of ILRC publications, including pricing, please visit our website at www.ilrc.org/publications.

Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth is a practical manual that includes a detailed and clear explanation of SIJS since the enactment of the Trafficking Victims Protection and Reauthorization Act of 2008, step-by-step guidance on SIJS procedure for

Immigrant Legal Resource Centerwww.ilrc.org

July 2013

both affirmative and defensive cases, sample completed application forms, sample juvenile court judge's orders, and chapters on working with children and youth, other types of immigration relief for children, the immigration consequences of delinquency, and an overview of immigration detention of children and youth.

The VAWA Manual: Immigration Relief for Battered Immigrants is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility and waivers, consular processing, conditional permanent residency, VAWA cancellation of removal, special immigrant juvenile status, and U visas.

Representing Survivors of Human Trafficking – A Promising Practices Handbook is a handbook containing lessons learned and promising practice tips in the context of a team-based approach to serving human trafficking survivors. The objective of this manual is to provide a roadmap based on real cases, including the mistakes and lessons learned and promising practices, that will hopefully save other advocates time and energy as you continue to build more effective capacity for assisting trafficked persons.

Essentials of Asylum Law combines up-to-date case law, cutting edge legal arguments on currently developing issues and decades of expertise from accomplished practitioners who have successfully represented clients through the years. This guide offers an expansive explanation of the legal theories and rules underpinning current asylum claims.

Families & Immigration - A Practical Guide is an essential tool for practitioners who assist in all aspects of family-sponsored immigration. It is a single volume resource designed for everyday practice by the beginning immigration attorney, immigration paralegal, community-based organization or family immigration advocate.

The U Visa: Obtaining Status for Immigrant Victims of Crime can guide you through the entire process of handling an immigration case for a U visa applicant – from eligibility screening through adjustment of status to assisting eligible family members and helping U nonimmigrants travel.

A Guide for Immigration Advocates is a comprehensive, two volume book about immigration law, written for beginning immigration attorneys, immigration law firms employing paralegals, and non-profit community-based organizations. It includes clearly written material discussing forms of relief that would apply to noncitizens such as family visa petitions, suspension and asylum.

Defending Immigrants in the Ninth Circuit: Impact of Crimes Under California and Other State Laws is a comprehensive manual on the representation of non-citizens who have been accused or convicted of crimes. It discusses all the

grounds of inadmissibility and deportability related to criminal offenses. Topics include drug convictions, admissions, addiction and abuse, aggravated felon status, crimes involving moral turpitude, and firearms offenses, as well as recent legislation. The manual includes an annotated chart analyzing 70 offenses under California law. It also features a comprehensive chapter on how to obtain post-conviction relief, including a discussion of legal requirements, practice tips, and sample briefs and papers, as well as a chapter on immigration holds and detainers.

DACA: The Essential Legal Guide is a comprehensive manual for advocates assisting DACA applicants with their deferred action requests. This manual includes practical, detailed chapters that outline the legal eligibility requirements, entire process of representing a DACA applicant from the initial client meeting to the closing of the case, tips on how to help clients obtain the necessary documents to apply, essential best practices on how to fill out all of the immigration forms, and helpful suggestions on both procedural issues and ways to effectively work with DACA applicants. There's an entire chapter that provides detailed information on the DACA criminal bars, including examples, legal discussion, and practice tips on how to request DACA for a client with a juvenile adjudication.

Free Online Materials

In addition to publishing the manuals described above, the ILRC provides free materials and publications on immigrant children and youth issues at www.ilrc.org, click on "Immigrant Youth" tab. These materials include:

Immigration Benchbook for Juvenile and Family Courts. A manual discussing immigration issues that affect juvenile and family courts.

Living in the United States: Guide for Immigrant Youth. A know your rights and responsibilities guide for both undocumented and documented immigrant youth in the United States in English, Spanish, and Korean.

The ILRC also provides free written materials, podcasts, and videocasts on DACA. These resources are available at: <http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals>.

LISTSERVES

VAWA Updates

The VAWA Updates listserv is maintained by the ASISTA Technical Assistance Project and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserv, contact ASISTA at questions@asistahelp.org.

Child Immigration Updates

The Lutheran Immigration and Refugee Service (LIRS) maintains a listserv for advocates working with children in immigration proceedings. To join the listserv, go to <http://lists.lirs.org/mailman/listinfo/childimmigration>.

National DACA Experts Listserv

The ILRC maintains and facilitates a listserv for advocates working on DACA requests. To join the listserv, please email Barbara Pinto at bpinto@ilrc.org.

WEBSITES

Asista

www.asistahelp.org

The Asista website includes a resource library of all of the INS and USCIS policy memoranda relevant to VAWA, U visa and T visa cases as well as many sample materials, motions, declarations, etc.

Immigrant Legal Resource Center (ILRC)

www.ilrc.org

The ILRC website is the central repository for information about training events, including seminars and webinars, publications on a variety of immigration law topics, and numerous resources including podcasts, videos, charts, practice advisories, and memos that can be downloaded for free. Additionally, the website contains information about ILRC's activities around civic engagement and policy work.

National Center for Refugee and Immigrant Children

www.refugees.org/our-work/child-migrants/

The National Center's website contains a resource library on various legal topics affecting immigrant children and youth.

Migration and Child Welfare National Network (MCWNN)

<http://www.americanhumane.org/children/programs/child-welfare-migration/about.html>

The MCWNN website is hosted on American Humane's website and has information and resources on improving the child welfare system's services to immigrant families including a *Social Worker's Tool Kit for Working With Immigrant Families -- A Child Welfare Flowchart* (August 2009) and *A Social Worker's Tool Kit for Working With Immigrant Families -- Immigration Status and Relief Options* (June 2009).

U.S. Citizenship and Immigration Service

www.uscis.gov

The USCIS website includes many links to the latest USCIS policy and procedural information, the status of applications, and easy access to downloadable USCIS forms.

National Immigration Law Center (NILC)

www.nilc.org

NILC staff specializes in immigration law, and the employment and public benefits rights of immigrants. Their website contains links to their policy analysis and impact litigation, publications, technical advice, and trainings information.

National Immigration Project of the National Lawyers Guild

www.nationalimmigrationproject.org

The “domestic violence” link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, including links to background information, USCIS policy memoranda and strategy articles.



**THE RIGHTS OF CHILDREN IN THE IMMIGRATION PROCESS
(JULY 2014)**

INTRODUCTION

In recent years, the number of immigrant children arriving in the United States has increased dramatically, with many children from Central America fleeing extreme violence and persecution in their home countries.¹ As a result, the U.S. government is facing serious logistical challenges in dealing with the increased flow of migration. In this time of humanitarian crisis, it is critical that the government's immigration enforcement objectives be balanced against the need to ensure that these children are treated in a manner that accords with the fundamental American values of fairness and due process embodied in our Constitution and laws, and is consistent with international human rights obligations.

This memorandum summarizes three critical categories of legal protections that must be provided to immigrant children, whether they are travelling alone or accompanied by a parent or guardian, who are apprehended by the government and placed in immigration detention: (1) access to relief in full and fair immigration proceedings; (2) detention in the least restrictive and most humane settings possible; and (3) legal representation in their immigration proceedings. This memorandum also sets forth prescriptions for how the federal government – specifically the Office of Refugee Resettlement (“ORR”) within the Department of Health and Human Services, the Department of Homeland Security (“DHS”) and its subunits, including U.S. Customs and Border Protection (“CBP”), and the Executive Office of Immigration Review (“EOIR”) within the Department of Justice – must treat children in the immigration process in order to comply with the law.

For children, the governing U.S. legal standards come from various overlapping sources. Two of the primary sources of law discussed in this memorandum are (1) the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), which applies to all “unaccompanied alien children” under the age of 18;² and (2) the 1996 settlement agreement in *Flores v. Meese*

¹ See generally, United Nations High Commissioner for Refugees, *Children on the Run* (March 2014), available at http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

² The TVPRA defines an “unaccompanied alien child” as a child under 18 who has no lawful status in the United States, and either has no parent/legal guardian in the United States, or has no no parent/legal guardian available to provide care and physical custody. 6 U.S.C. § 279(g)(2).

(“*Flores* Settlement”), which covers all children (whether accompanied or not) under the age of 18 who are in federal government custody. Other sources of law, including statutes, regulations, injunctions, and provisions of the U.S. Constitution, afford further safeguards to immigrant children who are taken into government custody and subjected to removal proceedings.

ACCESS TO RELIEF IN FULL AND FAIR IMMIGRATION PROCEEDINGS

Protections for Unaccompanied Children Under the TVPRA

For unaccompanied children, the TVPRA is an important source of statutory rights and government obligations. Congress enacted the TVPRA in response to documented incidents of mistreatment of immigrant children in the custody of the former Immigration and Naturalization Service (“INS”) as well as lawsuits that eventually culminated in the *Flores* Settlement.³ In recognition of INS’s wrongful and unlawful treatment of unaccompanied children, Congress, via the Homeland Security Act of 2002, divided INS’s former functions in this area between DHS and ORR. ORR was given responsibility over the care and custody of unaccompanied children. Although this change resulted in some improvements, advocates continued to voice concerns that the U.S. government was returning children facing persecution without conducting any assessment of the dangers they faced upon return.⁴ In response, Congress enacted the TVPRA, which now sets forth certain legal requirements for U.S. government treatment of unaccompanied children.

The TVPRA treats children differently depending on their nationality. For unaccompanied children from countries not contiguous with the United States (i.e. from all countries other than Mexico and Canada), the TVPRA requires that, barring “exceptional circumstances,” after any federal department or agency determines that it has an unaccompanied child in its custody, that child must be transferred to ORR custody within 72 hours. If the government wants to expel these children from the United States, the government must place them in regular removal proceedings before an immigration judge (commonly referred to as “INA 240 proceedings”). See 8 U.S.C. § 1229a. There, they must be offered a “full and fair hearing” of their claims, including the ability to present defenses to removal or apply for any forms of immigration relief for which they may be eligible. Importantly, this protection prevents unaccompanied children from noncontiguous countries from being expelled via any sort of streamlined or truncated removal procedures, such as expedited removal or pre-hearing voluntary departure.

³ For more information, see Women’s Commission for Refugee Women & Children, *Prison Guard or Parent?: INS Treatment of Unaccompanied Refugee Children* (May 2002), available at <http://www.refworld.org/pdfid/49ae53f32.pdf>, and U.S. Dep’t of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody, Report Number I-2001-009*, ch. 2 (Sept. 28, 2001), available at <http://www.justice.gov/oig/reports/INS/e0109/chapter2.htm#restraint>.

⁴ See, e.g., Betsy Cavendish & Maru Cortazar, Appleseed, *Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors* at 1 (2011) [hereinafter “*Children at the Border*”], available at <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

For unaccompanied children from “contiguous countries,” i.e. Mexico and Canada, the TVPRA imposes a special set of rules. For those children, within 48 hours of apprehension, CBP must determine: (1) whether the child is unlikely to be a victim of trafficking; (2) whether the child has no fear of returning to her country of origin; and (3) whether the child has the ability to make an independent decision to withdraw her application for admission into the United States. If the answer to all three questions is “yes,” then CBP can allow the unaccompanied child to withdraw her application for admission and immediately repatriate her. But if the answer to *any* of these questions is “no,” then CBP must transfer the child to the custody of ORR, and treat the child like any other unaccompanied child. This initial screening must take place within 48 hours of the child’s apprehension. If the results of the screening remain inconclusive after 48 hours, the child must be transferred to ORR custody and treated like other unaccompanied children. 8 U.S.C. § 1232(a)(4).

Troublingly, advocates have reported that CBP is failing to fulfill its statutory mandates to screen unaccompanied Mexican children and that they are still vulnerable to persecution, trafficking, and abuse. Among the reported problems are CBP’s lack of child-welfare expertise, its inadequate training and screening forms, and its failure to interview children “in a manner or in environments likely to elicit information that would indicate whether the minor is a potential victim of trafficking or abuse, and whether the child can and does voluntarily agree to return to Mexico.”⁵

Safeguards for Unaccompanied Children Under the Perez-Funez Injunction

Apart from the TVPRA, a longstanding court injunction in *Perez-Funez v. District Director*, 619 F. Supp. 656 (C.D. Cal. 1985), grants another layer of protection to unaccompanied immigrant children. The *Perez-Funez* litigation alleged that then-INS had a policy and practice of coercing children into accepting voluntary departure from the United States, thereby waiving their rights to a hearing and an opportunity to apply for relief.⁶ After trial, the court held that the government’s existing voluntary departure procedures violated the children’s due process rights, and interposed critical safeguards designed to minimize the risk of coercion. *Id.* at 669-70.

The *Perez-Funez* injunction, now implemented in regulations that apply to both DHS and EOIR, see 8 C.F.R. §§ 236.3(g)-(h), 1236.3(g)-(h), requires that unaccompanied children be both advised of their legal rights and guaranteed access to outside advice before voluntarily choosing to return to their countries of origin. Specifically, before the government can ask any unaccompanied child to voluntarily depart the United States or withdraw her application for

⁵ See *Children at the Border* at 2, 6-9 (2011); Ian Gordon, *4 Reasons Why Border Agents Shouldn’t Get to Decide Whether Child Migrants Can Stay in the US*, Mother Jones (July 1, 2014), available at <http://www.motherjones.com/politics/2014/06/unaccompanied-child-migrants-border-patrol-screening>

⁶ Voluntary departure permits the child to accept return to her country of origin, without resulting in an order of removal. See 8 U.S.C. § 1229c.

admission, the government must provide the child with (1) a written notice of rights; (2) a list of free legal service providers; and (3) access to telephones and notice that they may call a parent, close relative, friend, or attorney. Additionally, for unaccompanied children from noncontiguous countries (i.e. children not from Canada or Mexico), DHS must ensure that the child *in fact* communicates with a parent, adult relative, friend, or attorney. *Id.* §§ 236.3(g), 1236.3(g). If the child is under 14 years old, or is unable to understand the written notice of rights, the notice “shall be read and explained to the juvenile in a language he or she understands.” *Id.* §§ 236.3(h), 1236.3(h).

Accompanied Children & Proposals for Summary Removal Proceedings

A different set of standards may apply to children who are placed in removal proceedings with their family members or legal guardians. Although regular proceedings before an immigration judge are critical for ensuring a fair process, the Immigration and Nationality Act (“INA”) does not affirmatively require that accompanied children be provided with such hearings. Perhaps because of this, various proposals to subject families with children to summary or abbreviated removal procedures have begun to emerge. According to media reports, one senior ICE official has indicated that the Administration aims to process and remove certain children travelling with their families within 10 to 15 days of their arrival in the U.S. Because few details of the Administration’s plans have been publicly released, it remains unclear exactly what type of proceedings the Administration intends to use to process these families with children.

The INA already contains provisions for “expedited removal,” which allow DHS to remove certain noncitizens without hearings if they are inadmissible on certain grounds and are either arriving at the border, or are recently arrived and found within 100 miles of the border.⁷ The law mandates that if an individual subject to expedited removal expresses a fear of persecution or an intent to apply for asylum, she must be referred for a “credible fear interview” and interviewed by an asylum officer before she can be summarily removed.⁸ As noted above, unaccompanied children may not be removed without a hearing, but in the past DHS has subjected some children to expedited removal when they have been apprehended with their families.

Whether the mechanism is the existing statutory “expedited removal” procedure or a newly developed procedure, any proposal to rush these children and their families through abbreviated proceedings would raise a number of serious legal concerns, and increase the likelihood that individuals who face persecution or torture in their home countries will be erroneously deported. Returning children to dangerous conditions in their native countries would violate U.S. obligations under the United Nations Refugee Convention, the United Nations Convention

⁷ See 8 U.S.C. § 1225(b)(1); 69 Fed. Reg. 48877 (Aug. 11, 2004) (authorizing the application of expedited removal to noncitizens who have not been admitted or paroled and who are found within 100 air miles of the border and cannot demonstrate that they have been continuously physically present for 14 days).

⁸ 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 235.3(b)(4).

Against Torture, and other international human rights laws and principles.⁹ Many immigrants may be unable to secure immigration lawyers in such a compressed time frame. In addition, most immigrants fleeing for their lives are unlikely to be carrying all of the documentation necessary to support their asylum claims. These detained families with children would not have enough time to gather such evidence in abbreviated proceedings. Without counsel, these families are unlikely to understand what information is necessary to support their legal claims. In addition, to the extent the government plans to conduct any hearings telephonically, or via videoconference, such procedures could undermine the ability of immigration judges to make accurate credibility determinations.

With respect to expedited removal (i.e. removal without any hearing), even when the mandated statutory procedures are followed, removing noncitizens without giving them any opportunity to contest their removal before a judge or appeal the resulting removal order raises serious problems under the Constitution and international human rights law. Many noncitizens in expedited removal have substantial ties to the United States, and although it has not yet been established in case law, the ACLU's position is that at a minimum due process demands that they be provided with a meaningful opportunity to challenge their removal. In addition, the Suspension Clause¹⁰ requires that noncitizens facing removal have access to federal court review of the legal validity of their removal orders. *See INS v. St. Cyr*, 533 U.S. 289 (2001). Further, in practice the statutory protections for expedited removal are not always followed: advocates have documented numerous failures of immigration officers to comply with statutory mandates, denying noncitizens the ability to apply for asylum, ignoring expressions of fear of persecution, or coercing them into giving up their claims.¹¹ Finally, expedited removal is wholly inconsistent

⁹ *See* Convention relating to the Status of Refugees (1951 Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954; Protocol relating to the Status of Refugees (1967 Protocol), January 31, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994.

¹⁰ The Suspension Clause provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const., art. I, § 9, cl. 2.

¹¹ *See, e.g.*, Human Rights First, *How to Protect Refugees and Prevent Abuse at the Border*, at 10-13, and Appendix C (June 2014), *available at* <http://www.humanrightsfirst.org/sites/default/files/Asylum%20on%20the%20Border%20-%20final%206-5-2014.pdf>; United States Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (2005), *available at* <http://www.uscirf.gov/reports-briefs/special-reports/report-asylum-seekers-in-expedited-removal>.

with the requirement in human rights law that noncitizens receive a meaningful hearing before a neutral arbiter before they are deported.¹²

To avoid violating its obligations under the Constitution and international law, the government must:

- Ensure that all children are provided with a meaningful hearing before an immigration judge, with the right to judicial review, before they are removed. The simplest way to achieve this is to provide all children with regular INA 240 proceedings, rather than expedited removal proceedings or other summary removal procedures;
- Ensure that all children are given sufficient time and ability to seek any forms of relief for which they are eligible;
- Ensure that all children are given sufficient time to obtain, and the opportunity to consult with, legal counsel.

DETENTION IN THE LEAST RESTRICTIVE AND MOST HUMANE SETTINGS POSSIBLE

If the government chooses to detain any child under the age of 18, it can only do so subject to certain rigorous legal standards. These standards ensure that children are detained in the least restrictive settings possible, and that the conditions of their detention are humane—a critical consideration when most DHS detention facilities are indistinguishable from jails and prisons. Here, two overlapping legal regimes are particularly important – the TVPRA, and the *Flores Settlement*. As noted, the TVPRA specifically protects unaccompanied children, whereas the *Flores Settlement* reaches *all* children under the age of 18 in government custody, including those who are apprehended with their family members or legal guardians. This settlement remains in force today, and the ACLU previously invoked it to challenge inhumane and unlawful

¹² For more information, see American Civil Liberties Union, Written Statement Submitted to the Civil Society Consultation for the Universal Periodic Review of the United States of America Regarding Access to Justice in the U.S. Immigration System (April 1, 2014), *available at* <https://www.aclu.org/files/assets/140325%20UPR%20Access%20to%20Justice%20Final.pdf>. *See also, e.g.*, International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, arts. 13-14; American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (guaranteeing each person “the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law”).

conditions at the T. Don Hutto Family Residential Facility in Taylor TX, via actions in federal district court.¹³

The government should detain children only rarely and as a last resort. Both the TVPRA and the *Flores* Settlement embody a strong policy in favor of releasing children from custodial settings into placements with family members or in the community. The TVPRA requires that unaccompanied children be “promptly” placed “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). Similarly, the *Flores* Settlement mandates that the government “release a minor from its custody without unnecessary delay,” as long as detention is not required to ensure a child’s appearance at immigration court, or for safety reasons. *Flores* Settlement, ¶ 14. Taken together, these provisions demand that the government actively and continuously seek release of each child in custody, unless the child’s detention is necessary to secure her appearance in court or her safety. *See also* 8 C.F.R. § 236.3(b) (setting forth scheme for release of immigrants under 18 years old).

In addition, the *Flores* Settlement imposes certain minimum standards with respect to detention conditions for children. *Flores* Settlement, ¶ 12.A. Among other obligations, facilities that house children must be equipped with toilets and sinks and adequate temperature control and ventilation. The detained children must be provided with food, water, and medical assistance that is easily accessible in emergencies. Additionally, the government must adequately supervise any detention facilities to ensure that children are protected, and whenever possible, housed separately from unrelated adults.

The ACLU opposes any government initiative that seeks to detain entire families as a means of addressing this humanitarian crisis, in large part because the government has a poor track record of maintaining family detention facilities that comply with the law. As the ACLU previously stated in the *Hutto* litigation, keeping entire families in custody contravenes Congress’s intent to place children in the least restrictive settings possible, and with their family members.¹⁴ Family detention is not a viable means of effectuating this goal, and may result in detention conditions that violate both the TVPRA and the *Flores* Settlement.¹⁵

¹³ For more information on the *Hutto* litigation, see Case Summary in the ACLU’s Challenge to the Hutto Detention Center, <https://www.aclu.org/immigrants-rights/case-summary-aclu-challenge-hutto-detention-center>.

¹⁴ In addition, the ACLU Border Litigation Project, in conjunction with other organizations, has filed a complaint with DHS documenting numerous instances of abuse against children held in CBP custody. See ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention* (Jun. 11, 2014), <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>. These instances of mistreatment and harassment are further cause for serious concerns with the conditions in which the government detains immigrant children.

¹⁵ In addition to these protections, a court injunction in *Orantes-Hernandez v. Gonzales* (“*Orantes* Injunction”) also applies to these facilities. The *Orantes* Injunction protects all citizens and nationals of El Salvador who are eligible for political asylum and are in, have been, or will

To comply with applicable legal safeguards and ensure that children and families are detained in the most humane conditions possible, the government must:

- Reject the use of detention as an enforcement tool for reducing the flow of immigrants into the U.S.
- Ensure that children are promptly placed in the least restrictive settings possible and that detention is used only as a last resort;
- Reject the detention of entire families and use alternatives to detention, including release on recognizance, when necessary to secure appearance for immigration hearings or removal;
- Ensure that any facilities where children are detained comply with minimum standards under the *Flores* Settlement.

GUARANTEED LEGAL REPRESENTATION IN IMMIGRATION PROCEEDINGS

Appointing counsel for immigrants facing removal ensures fair processes consistent with constitutional and statutory mandates. All persons in removal proceedings must have “a reasonable opportunity” to present, examine, and object to evidence. 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1240.10(a)(4). In addition, all persons in removal proceedings have the right to be advised of the charges against them. *See* 8 U.S.C. § 1229(a); 8 C.F.R. § 239.1. As the immigration agency has long recognized, these provisions embody a noncitizen’s general due process right to a full and fair hearing of claims. *See Matter of Exilus*, 18 I & N Dec. 276 (BIA 1982); *see also Yamataya v. Fisher*, 189 U.S. 86, 99-100 (1903). In order to effectuate this constitutional and statutory mandate, individuals in removal proceedings, particularly those who may have valid claims for relief (such as asylum, withholding of removal, or protection under the Convention Against Torture) must have a meaningful opportunity to gather evidence and present their arguments to an immigration judge. Particularly when facing immigration proceedings subject to an expedited or accelerated timetable, individuals should have legal representation to ensure that their proceedings are full and fair.

These concerns are even more heightened for children facing deportation. Because of their age and lack of maturity, children cannot vindicate their right to a full and fair hearing without the aid of an attorney. As the Supreme Court has stated in addressing the right to appointed counsel in juvenile delinquency proceedings, a child “needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child

be in DHS custody. The injunction affords a variety of safeguards to Salvadoran asylum seekers, including setting minimum standards of detention, informing them of their rights to apply for relief, granting them access to legal counsel, prohibiting coercion and abuse by immigration officers, and forbidding their transfer outside the geographic area of their apprehension for seven days. For more information on the *Orantes* Injunction, see *Orantes-Hernandez v. Gonzales*, 504 F. Supp. 2d 825 (C.D. Cal. 2007), *aff’d sub nom. Orantes-Hernandez v. Holder*, 321 Fed. Appx. 625 (9th Cir. 2009). The ACLU is among the class counsel in *Orantes*.

‘requires the guiding hand of counsel at every step in the proceedings against him.’” *In re Gault*, 387 U.S. 1, 37 (1967) (quoting *Powell v. State of Alabama*, 287 U.S. 45, 69 (1932)). The need for legal counsel is just as great, if not greater, in the immigration context, where the laws are notoriously complex.

Moreover, the TVPRA itself evinces Congress’s intent that children have legal representation in their immigration proceedings. The TVPRA directs the government to provide access to counsel for every unaccompanied child, and requires ORR to “ensure, to the greatest extent practicable” that all unaccompanied children in its care “have counsel to represent them in legal proceedings or matters and protect them from mistreatment, exploitation, and trafficking.” 8 U.S.C. § 1232(a)(5)(D)(iii), (c)(5).

Although the government has taken some steps toward ensuring legal representation for children in immigration proceedings, including EOIR’s recently-announced partnership with the Corporation for National and Community Service to fund a limited number of lawyers and legal support staff for unaccompanied children, children are regularly forced to appear in court without counsel and defend themselves against trained government prosecutors.

To comply with constitutional and other legal safeguards, the government must:

- Ensure that individuals with colorable claims for relief, such as asylum, withholding of removal, or protection under the Convention Against Torture, are not forced to endure accelerated immigration proceedings;
- Ensure that each and every child in removal proceedings is appointed legal representation in his or her immigration proceedings.

* * *

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Step-by-Step Guide on Apprehension and Detention of Juveniles in the United States

Part I: The U.S. Government's Immigration Enforcement Framework

The Department of Homeland Security (DHS) was created in 2001. Two of its agencies, the U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) are responsible for all immigration enforcement in the United States.¹

CBP is charged specifically with securing the U.S. borders and facilitating trade. Its primary mission is preventing terrorists and terrorist weapons from entering the United States. CBP is also responsible for apprehending individuals attempting to enter the United States illegally, as well as stemming the flow of illegal drugs and other contraband. It is the agency that initially apprehends and detains children who are trying to enter the United States without authorization.

The two components of CBP most likely to encounter immigrant children entering the United States are the Office of Field Operations (OFO) and Border Patrol (BP). OFO officers screen all foreign visitors, returning U.S. citizens and imported cargo that enters the U.S. at more than 300 land, air and sea ports. BP agents work along U.S. borders in the areas between ports of entry. Border Patrol is responsible for securing almost 7,000 miles of border between the U.S. and its Canadian and Mexican neighbors, as well as other coastal areas.²

ICE is tasked with enforcing immigration laws in the interior of the country and ensuring that people living in the United States have authorization to do so. The agency devotes the majority of its resources to its two principal operating components—Homeland Security Investigations (HSI), responsible for detecting criminal immigrants, and Enforcement and Removal Operations (ERO), dedicated to removing migrants without authorization to remain in the United States.³

Part II. How Migrant Children Arrive at the United States Southern Border Seeking Entry

Most migrant children attempting to enter the United States—traveling alone or with family—cross into the United States through the U.S./Mexico border. Once at the U.S./Mexico border, children may present themselves at an official port of entry and ask for asylum or protection, or they may attempt to cross into the country between ports of entry, usually in the desert. Children presenting themselves at the ports of entry are screened by OFO officers and if they do not have authorization to enter the United States, they are held in OFO facilities until they can be repatriated or sent to longer-term government custody. Children who are apprehended by BP agents as they attempt to enter between ports of entry are taken to BP short-term hold facilities until ICE transfers them to longer-term government facilities or until they can be repatriated.

Part III: The Process When an Unaccompanied Child Is Apprehended Trying to Enter the United States without Permission

A. Children from non-contiguous countries

As previously stated, CBP officials are the most likely enforcement officials to apprehend children attempting to enter the U.S. through the Mexican border. After apprehension, the children will be taken to a CBP short-term hold facility for processing. Once DHS has determined that an individual is under the age of 18, it must then determine whether he or she meets the definition of an unaccompanied child (UAC). If the child meets the definition of UAC, he or she must be transferred to an appropriate facility within 72 hours of apprehension.⁴ ICE is responsible for these transfers.

B. Children from contiguous countries

Different rules apply to children coming to the United States from contiguous countries than to children coming from other parts of the world.

In 2008, Congress passed the Trafficking Victim Protection Reauthorization Act (TVPRA), which required CBP officials to determine during initial intake whether an unaccompanied child is a national of a contiguous country. If the child is from Mexico or Canada, CBP must screen him or her to ensure that the child is not a potential victim of trafficking, has no possible claim to asylum, and can and does voluntarily accept return. Unless all of these questions are answered in the affirmative, the child cannot be immediately returned, but rather must remain to be evaluated for a claim to protection in the United States.⁵

If it appears that the child does not have authorization to enter the United States, and can safely be returned, the child can be repatriated without ever being placed in immigration proceedings. If any of the answers to the inquiries the U.S. officials must make are no, or if no determination of all three criteria can be made within 48 hours, the TVPRA mandates that the child shall "immediately" be transferred to Office of Refugee Resettlement (ORR) custody. Once transferred to ORR, Mexican and Canadian children are treated like all other unaccompanied children in detention.⁶

Consular involvement

Mexican children found by CBP to be without protection concerns can be immediately repatriated. The mechanisms of their repatriation are governed by an umbrella agreement between DHS and the Secretary for Exterior Relations of Mexico, implemented by local agreements at different border areas.

Under the 1963 Vienna Convention and other agreements between the United States and Mexico, all Mexican nationals in the United States are guaranteed the right to speak with a consular official, and that the Mexican government will immediately be notified if a citizen is in U.S. government custody, and that a Mexican consular official has the right to visit a Mexican national in

detention.⁷ CBP has given Mexican consular officials office space in many of the OFO and BP stations so that a local consular official can come to the facility to interview the migrant and help facilitate repatriation. When CBP wants to return a child to Mexico, the consular official will often coordinate the return of the child with Mexico's national child welfare agency to ensure the safe repatriation of the child.

Children traveling with family members

Family groups traveling with children raise unique issues for DHS. DHS has long struggled with how to treat family units apprehended at the border.

Until recently, DHS maintained only one family shelter, the Berks Family Residential Center in Leesport, Pennsylvania, which was opened in 2001 to accommodate immigrant families in ICE custody. The Center attempts to be a humane alternative to maintain family unity as families await the outcome of immigration hearings or return to home countries.

In 2009, the administration stopped detaining families at the T. Don Hutto facility in Texas after a firestorm of opposition and a lawsuit. In June 2014, it opened a new family detention facility at the CBP training facility in Artesia, New Mexico, which will have capacity for 700 mothers and children. The administration has indicated that it plans to open more facilities for families in response to the increased arrivals at the Southern border.

Because CBP does not have authority to detain U.S. citizens, when U.S. citizen children are apprehended and detained with a family member who does not have authorization to enter the country, the children must be released. There is no formal and public CBP policy on how CBP releases these U.S. citizen children and whether or not they will release these children to an undocumented parent or caregiver in the United States.

Part IV. Overview of Detention Conditions of Immigrant Children in the United States

When a child entering the United States without authorization is apprehended, there are three kinds of deten-

tion they may be subject to: detention in a CBP short-term hold facility, longer-term ICE detention facilities designed for families traveling together, or shelters and programs specifically for unaccompanied children run by ORR/Department of Children's Services (DCS).

In 1997, a California federal court approved the *Flores* settlement agreement that sets national policy regarding the detention, release, and treatment of children in INS custody. These standards are still in force today and apply to all children apprehended by DHS.⁸ The *Flores* settlement requires that juveniles be held in the least restrictive setting appropriate to their age and special needs to ensure their protection and well-being; that juveniles be released from custody without unnecessary delay to a parent, legal guardian, adult relative, individual specifically designated by the parent, licensed program, or, alternatively, an adult who seeks custody whom DHS deems appropriate; and that "juveniles will not be detained with an unrelated adult for more than 24 hours."

A. Immigration and Customs Enforcement detention

While it appears that most detained immigrant children in immigration proceedings today are in the custody of ORR/DCS, DHS retains custody of some children. In general, ICE should not have custody of any children other than those in family detention, those who have been ordered removed (and whom ICE is in the process of removing), those whom ICE is transferring within 72 hours, and those classified as a national security risk under the Patriot Act.⁹ There may be cases where children are wrongly detained due to faulty age determinations.¹⁰ It also appears that ICE may detain additional children who are not with their parents, but whom the agency may consider to be "accompanied" and therefore not eligible for transfer to DCS. Those children not deemed "unaccompanied" may be placed in ICE facilities not appropriate for children.¹¹

B. Detention in Border Patrol facilities

When a child is initially apprehended entering the United States without authorization, he or she may be encountered by Customs and Border Protection. CBP

maintains short-term hold facilities along the border and at all official ports of entry to the United States, including airports and bridges. If CBP encounters a child, traveling alone or with family, and they do not believe that child has permission to enter the United States, they will put that child in a holding cell. If a child is traveling with family, the child will be held with their family members. If they are unaccompanied, they will be held with other juveniles.

CBP facilities are intended to be short-term hold areas for children while BP officers determine the child's authorization to enter the United States, to process a credible fear claim or while they are waiting for another agency to transfer the child to another facility (such as an ICE or ORR facility). Children should not be held in those facilities for longer than 72 hours.¹² After 72 hours, if CBP deems it necessary to continue the detention of a child, ICE must transfer that child to a long-term ORR or ICE facility.¹³ Often, due to delays in transport or a lack of long-term immigration detention capacity around the country, children have been held for much longer, up to two weeks.¹⁴ Despite the *Flores* and TVPRA standards for the treatment of children in CBP facilities, in practice, these facilities are not appropriate places to hold children.

C. Detention in ORR facilities

If it is deemed necessary for a child to be sent to an ORR facility because they are unaccompanied and are not able to be returned directly to Mexico, ICE will transfer the child from the short-term CBP facility to an ORR facility.

ORR has four kinds of detention facilities to hold unaccompanied immigrant children. These facilities operate along a continuum of care from least restrictive settings to more penal-like settings. From least to most restrictive, the types of facilities are: short-term and long-term foster care; shelters and group homes; therapeutic foster care and residential treatment centers; and staff-secure and secure facilities. The placement determinations for each child are made based on information regarding the child's best interests and security risk. The *Flores* agreement and the TVPRA of 2008 man-

date that children should be housed in the least restrictive setting possible and the DCS continuum of care is reflective of this principle.

Part V: Release from Detention

Once a child is determined eligible for placement in an ORR facility, the federal government makes a determination as to whether or not that child can be reunified with an adult sponsor in the United States while their immigration court case is pending. A sponsor for a child may be a parent, legal guardian, family member, or other responsible adult willing to care for the child. Of the children who are eventually reunified, the majority go to live with a parent or legal guardian.

Part VI: Unaccompanied Refugee Minor Program

The children in ORR custody who are never reunited with a sponsor, have received legal status and will remain in the country will be transferred to the Unaccompanied Refugee Minor Program (URM) within ORR. The URM program establishes legal responsibility, under state law, to ensure that unaccompanied minor refugees and entrants receive the full range of assistance, care, and services that are available to all foster children in that State. It acts like a federal foster care system for refugee youth, victims of human trafficking, and other unaccompanied children who have permanent legal status to remain in the country.

Notes

1 Prior to the creation of DHS, the Immigration and Nationality Services (INS), which was established on June 10, 1933 as part of the Department of Justice, protected and enforced the U.S Immigration and Naturalization laws. The INS also addressed illegal entrance into the United States, prevented receipt of benefits such as social security or unemployment by those ineligible to receive them, and investigated, detained, and deported those illegally living in the United States.

2 www.cbp.gov

3 www.ice.gov

4 See discussion in Part III, Section C "Children Traveling with Family Members" for a discussion on the concerns caused by the definition of unaccompanied alien child as it relates to non-parent family members.

5 Ibid.

6 Betsy Cavendish & Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed (2011) ("*Children at the Border*").

7 United Nations Vienna Convention on Consular Relations, April 24, 1963, 596 U.N.T.S. 261.

8 Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1996) (*Flores* agreement).

9 Women's Refugee Commission, *Halfway Home: Unaccompanied Children in Immigration Detention* (2009), p. 12. http://wrc.ms/Halfway_Home.

10 Ibid.

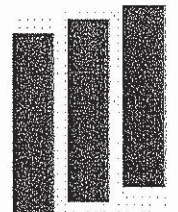
11 During the research for *Halfway Home*, the Women's Refugee Commission staff encountered several children in ICE custody. They have not encountered any since the implementation of the TVPRA. DHS had expressed confusion on the proper placement for unaccompanied children with criminal or juvenile records. The TVPRA clarified that they should be transferred to ORR/DCS.

12 TVPRA.

13 Ibid.

14 Women's Refugee Commission, *Forced From Home: The Lost Boys and Girls of Central America* (October 2012) ("*Forced From Home*"). <http://wrc.ms/Forced-background>.

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THE ADVOCATES FOR HUMAN RIGHTS

Fact Sheet Regarding Humanitarian Crisis at U.S.-Mexico Border July 10, 2014

Why are so many unaccompanied children and mothers with children coming to the U.S.? Why the sudden surge? Who/what created the problem?

First, it is important to note that children and families are seeking asylum throughout the region, not just in the United States. According to United Nations Higher Commissioner for Refugees (UNHCR), asylum applications in countries other than the United States have risen more than 700% since 2008; Nicaragua alone saw a 238% increase last year, according to Leslie Velez, Senior Protection Officer, Washington Office of the UN High Commissioner for Refugees, in 7/9/2014 press call). Mexico also serves as a country of asylum in the region, and in 2013 they received 5500 unaccompanied children fleeing El Salvador, Honduras, and Guatemala.

While the number of children and families fleeing to the United States has risen dramatically this year and is projected to reach over 90,000 people by the end of the fiscal year, the regional crisis that has forced internal and international displacement of thousands from Honduras, Guatemala, and El Salvador has been underway for several years. Flows of children from Honduras, Guatemala, and El Salvador began to double in 2011, jumping from approximately 6,000 kids in 2008 to 52,000 thus far in the 2014 fiscal year.

Honduras, El Salvador and Guatemala are struggling with what is essentially an undeclared regional war, with murder rates nearly 20 times higher than that of the United States, street gangs controlling wide swaths of neighborhoods throughout the region, government corruption, and political instability. (<http://www.theguardian.com/world/2014/jul/09/central-america-child-migrants-us-border-crisis>). "For many people the choice is to flee or to die," says Carlos Paz, director of the San Pedro Sula office of the church organization C  ritas (<http://www.theguardian.com/world/2014/jul/09/central-america-child-migrants-us-border-crisis>).

What is required by U.S. law in regard to unaccompanied children? How much time does the process take for a child? What happens to the child — who takes care of the child, where does the child live, etc. — during the process?

Unaccompanied alien children who are apprehended by U.S. immigration officials must be placed in the care of the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR). Once there, in addition to meeting their basic physical needs, children must be screened for protection needs, including determining whether children face persecution, torture, or are victims of human trafficking. Children may be released into foster care.

<http://www.acf.hhs.gov/programs/orr/programs/ucs/about>

While ORR maintains a legal access program, with the rapid expansion of the system a breakdown in legal services is resulting. Without access to representation, children face little chance of understanding how to file an asylum claim or seek other legal protection in the United States.

What is the difference between an "immigrant" and a "refugee"?

A "refugee" is a particular category of "immigrant" who is seeking to enter another country out of fear of persecution. International law defines a "refugee" as a person who is outside their country of nationality and is afraid to return to that country or avail themselves of that country's protection owing to a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

The refugee protection system emerged following the horrific failure of the international community to protect people fleeing the Holocaust to ensure that people fleeing persecution would not be turned back at the border before being given the chance to explain why they needed protection.

Has U.S. immigration policy caused the problem?

U.S. immigration policy has neither caused nor fueled this crisis. Children and families from Guatemala, El Salvador, and Honduras are fleeing the violence that has resulted from the breakdown in the rule of law in their countries. They are seeking safety elsewhere in their own countries and in countries throughout the region, including the United States.

The situation at the U.S.-Mexico border should be understood as a humanitarian situation resulting from the regional refugee crisis. To date, the Obama administration's declaration of this as a serious humanitarian situation is correct and appropriate. This crisis is not an immigration "problem" that will be helped by deployment of more enforcement resources to apprehend illegal border crossers or by weakening international protection systems. While any issue of migration always raises concerns about impact on US immigration policy, the focus on the border issue without recognizing the humanitarian obligations of this regional refugee crisis fails to address the problem.

Is it true that unaccompanied children from Mexico and from Canada are treated differently by the U.S. than those from other countries. If so, why?

While Mexican children also may present international protection concerns, including trafficking, domestic violence, and violence at the hands of criminal armed actors, the number of unaccompanied Mexican children seeking protection in the United States has not increased as a result of this crisis, and remains steady at approximately 3% of all unaccompanied alien children in US custody (<http://www.acf.hhs.gov/programs/orr/programs/ucs/about>). As citizens of contiguous countries, however, Mexican and Canadian children are exempted from U.S. law requiring that unaccompanied children be placed in ORR custody.

Why can't the children be immediately deported?

These children, like all people seeking protection, must be given the chance to be heard. The message from the Obama administration cannot be "don't come, you'll be sent back" without violating our obligations to ensure that everyone who seeks asylum from persecution or protection from torture or human trafficking.

If a child is deported and has to return to his/her home country, how does the child get there? How is the child reconnected with his or her family? Who is responsible for a child once that child has been deported?

Children, like all others deported from the United States, generally are returned to the capital cities of their countries. The United States takes no particular steps to protect children upon their deportation. (<http://www.theguardian.com/world/2014/jul/09/central-america-child-migrants-us-border-crisis>; http://www.unhcrwashington.org/sites/default/files/1_UAC_UNHCR%20Statement%20for%20the%20Record_HJC%20Hearing%20on%20UACs.pdf).