

A GUIDE TO CHILDREN ARRIVING AT THE BORDER: Laws, Policies and Responses

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CONTENTS

- 1** PREFACE AND BACKGROUND
- 7** PROCEDURES AND POLICIES
- 11** U.S. GOVERNMENT RESPONSE, AND
OTHER PROPOSED RESPONSES
- 15** ENDNOTES

The American Immigration Council is updating this Guide which was first issued in summer 2014. It provides information about the tens of thousands of children—some travelling with their parents and others alone—who have fled their homes in Central America and arrived at our southern border. This Guide seeks to explain the basics. Who are these children and why are they coming? What basic protections does the law afford them? What happens to the children once they are in U.S. custody? What have the U.S. and other governments done in response? What additional responses have advocates and legislators proposed? The answers to these questions are critical to assessing the U.S. government’s responses and understanding the ongoing debate about whether reforms to the immigration laws and policies involving children are needed.

BACKGROUND: WHO ARE THE CHILDREN, WHY ARE THEY COMING, AND WHAT OBLIGATIONS DO WE HAVE?

What does “unaccompanied children” mean?

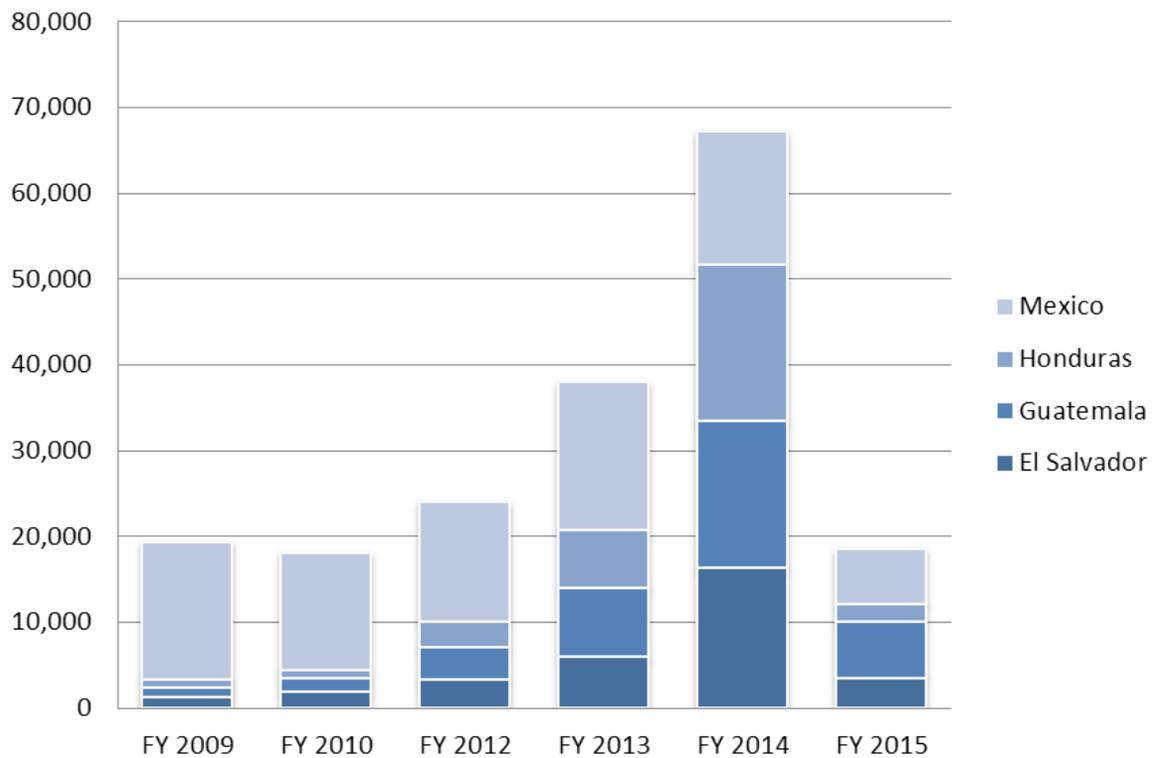
Children who arrive in the United States alone or who are required to appear in immigration court on their own often are referred to as unaccompanied children or unaccompanied minors. “Unaccompanied alien child” (UAC) is a technical term defined by law as a child who “(A) has no lawful immigration status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

Where are these children and families coming from?

The vast majority of unaccompanied children and families arriving at the southwest border come from Mexico, Guatemala, Honduras, and El Salvador, although unaccompanied children may arrive from any country. Over the past few years, increasing numbers of children and families have been fleeing violence in Guatemala, Honduras, and El Salvador—a region of Central America known as the “Northern Triangle.” According to U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security (DHS), between October 1, 2013 and September 30, 2014, CBP encountered 67,339 unaccompanied children. The largest number of children (27 percent of the total) came from Honduras, followed by Guatemala (25 percent), El Salvador (24 percent), and Mexico (23 percent).² The number of unaccompanied children arriving at the southern border has decreased since its peak in the summer and fall of 2014. Between October 1, 2014 and April 30, 2015, CBP apprehended 3,514 unaccompanied minors from El Salvador, 6,607 from Guatemala, 1,977 from Honduras, and 6,519 from Mexico.³ This represents approximately a 45 percent decrease from the same time period the prior year.⁴ The apprehensions of “family units” (children with a parent or legal guardian) also declined. There were 16,997 family unit apprehensions from October 1, 2014 to April 30, 2015, a 35 percent decrease from 26,341 apprehensions during the same time frame the year before.⁵

As discussed below, this decrease in apprehensions likely is tied to increases in apprehensions in Mexico and increased security measures along Mexico's southern border.

Unaccompanied Migrant Children Encountered FY 2009-FY 2015*



Source: CBP.

*FY 2015 through April 30, 2015.

Why are children and families leaving their home countries?

Researchers consistently cite increased Northern Triangle violence as the primary motivation for recent migration, while identifying additional causes including poverty and family reunification.⁶ A report by the [Assessment Capacities Project \(ACAPS\)](#), citing 2012 United Nations Office on Drugs and Crime (UNODC) data, highlighted that Honduras had a homicide rate of 90.4 per 100,000 people. El Salvador and Guatemala had homicide rates of 41.2 and 39.9, respectively.⁷ A 2014 analysis conducted by Tom Wong, a University of California-San Diego political science professor, took the UNDOC data and compared it to the data on unaccompanied children provided by CBP. Wong found a positive relationship between violence and the flow of children: “meaning that higher rates of homicide in countries such as Honduras, El Salvador, and Guatemala are related to greater numbers of children fleeing to the United States.”⁸

While a child may have multiple reasons for leaving his or her country, children from the Northern Triangle consistently cite gang or cartel violence as a primary motivation for fleeing. Research conducted in El Salvador on child migrants who were returned from Mexico found that 60 percent listed crime, gang threats, and insecurity as a reason for leaving.⁹ In a United Nations High Commissioner for Refugees (UNHCR) survey of 404 unaccompanied children from El Salvador, Guatemala, Honduras, and Mexico, 48 percent of the children “shared experiences of how they

had been personally affected by the...violence in the region by organized armed criminal actors, including drug cartels and gangs or by State actors.”¹⁰ Furthermore, the violence frequently targets youth. Recruitment for gangs begins in adolescence—or younger—and there are incidents of youth being beaten by police who suspected them of gang membership.¹¹

Are children coming to the United States because of DACA?

No. U.S. immigration enforcement policy, including deferred action programs that would allow certain undocumented immigrants to remain in the United States temporarily, is not a primary cause of the migration. Notably, the rise in violence and corresponding increase in unaccompanied child arrivals precede both the Deferred Action for Childhood Arrivals (DACA) program and Senate passage of an immigration reform bill S.744—positive developments that are sometimes cited as pull factors by Obama Administration critics. In fact, in its 2012 report, the Office of Refugee Resettlement (ORR) stated that “in a five month period between March and July 2012, the UAC program received almost 7,200 referrals—surpassing FY2011’s total annual referrals,” showing that the rise in UACs predated the implementation of the DACA program. Furthermore, individuals who arrived in the country after January 1, 2007 would not be eligible for DACA.

Would more Border Patrol resources deter border crossers?

There is little evidence to support the proposition that the border must be further fortified to deter an influx of children and families. Treating the current situation as simply another wave of unauthorized immigration misses the broader policy and humanitarian concerns driving these children and families’ migration. In fact, many women and children are turning themselves over to Border Patrol agents upon arrival and are not seeking to evade apprehension.¹²

Furthermore, CBP’s resources along the southwest border are already significant. There were 18,156 Border Patrol agents stationed along the southwest border as of Fiscal Year (FY) 2014.¹³ The annual Border Patrol budget stood at \$3.6 billion in FY 2014.¹⁴ The Border Patrol has at its command a wide array of surveillance technologies: ground radar, cameras, motion detectors, thermal imaging sensors, stadium lighting, helicopters, and unmanned aerial vehicles.¹⁵

What are our obligations under international law?

The United States has entered into treaties with other countries to ensure the protection and safe passage of refugees.¹⁶ Among the most important are the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol. Under these treaties, the United States may not return an individual to a country where he or she faces persecution from a government or a group the government is unable or unwilling to control based on race, religion, nationality, political opinion, or membership in a particular social group. A separate treaty, known as the Convention Against Torture, prohibits the return of people to a country where there are substantial grounds to believe they may be tortured.¹⁷

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

or protection from torture. To meet its protection obligations, the United States should ensure that children are safe, have an understanding of their situation and their rights, and have adequate representation when they tell their stories to a judge.

Do Central American children qualify for protections under international and U.S. law?

Many of the children fleeing to the United States have international protection needs and could be eligible for humanitarian relief. According to UNHCR's [survey](#) of 404 unaccompanied children from Mexico, El Salvador, Honduras, and Guatemala, 58 percent "were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection." Notably, of those surveyed, UNHCR thought 72 percent of the children from El Salvador, 57 percent from Honduras, and 38 percent from Guatemala could merit protection.¹⁸ While international protection standards are in some cases broader than current U.S. laws, the fact that over 50 percent of the children UNHCR surveyed might qualify as refugees suggests that a thorough and fair review of these children's claims is necessary to prevent them from being returned to danger.

Moreover, children may qualify for particular U.S. forms of humanitarian relief for victims of trafficking and crime, or for children who have been abused or abandoned by their parents. A 2010 survey conducted by the Vera Institute of Justice indicated that 40 percent of children screened while in government custody could be eligible for relief from removal under U.S. laws.¹⁹ Given their age, the complexity of their claims, and the trauma that generally accompanies their journey, determining whether these children qualify for some form of protection can be a time-consuming process.

What types of U.S. immigration relief do children potentially qualify for?

The most common types of U.S. immigration relief for which children potentially are eligible include:

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

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

U visas: A U visa is available to victims of certain crimes. To be eligible, the person must have suffered substantial physical or mental abuse and have cooperated with law enforcement in the investigation or prosecution of the crime.

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

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

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

The TVPRA of 2008, signed by President Bush, responded to concerns that unaccompanied children apprehended by the Border Patrol “were not being adequately screened” for eligibility for protection or relief in the United States.²⁰ The TVPRA also directed the development of procedures to ensure that if unaccompanied children are deported, they are safely repatriated. At the outset, unaccompanied children must be screened as potential victims of human trafficking.²¹ However, as described further below, procedural protections for children are different for children from contiguous countries (i.e., Mexico and Canada) and non-contiguous countries (all others). While children from non-contiguous countries are transferred to the Department of Health and Human Services (HHS) for trafficking screening, and placed into formal immigration court removal proceedings, Mexican and Canadian children are screened by CBP for trafficking and, if no signs of trafficking or fear of persecution are reported, may be summarily returned home pursuant to negotiated repatriation agreements.²² The TVPRA in 2008 also ensured that unaccompanied alien children are exempt from certain limitations on asylum (e.g., a one-year filing deadline).²³ It also required HHS to ensure “to the greatest extent practicable” that unaccompanied children in HHS custody have counsel, as described further below—not only “to represent them in legal proceedings,” but to “protect them from mistreatment, exploitation, and trafficking.”²⁴

Can new arrivals obtain a grant of Temporary Protected Status?

Although Salvadorans and Guatemalans in the United States have been eligible for Temporary Protected Status (TPS) in the past, there currently is no category that would include children or families arriving today or at any point since the spring of 2014. TPS is a limited immigration status that allows an individual to remain temporarily in the United States because of civil war, natural disasters, or other emergency situations that make it difficult for a country to successfully reintegrate people. TPS requires a formal designation by the Secretary of Homeland Security, in consultation with the Secretary of State, and requires, among other things, that a country formally request this designation from the U.S. government.

How have other countries in the region responded to the increase in child migrants?

Mexico, with support from the United States, has responded to the increasing number of children and families fleeing Central America by expanding its security measures along its southern border as well as its internal enforcement. Part of the Mexican government’s southern border security plan is funded through the Mérida Initiative and as of October 2014, about \$1.3 billion dollars in U.S. assistance went to Mexico through this initiative.²⁵

According to the Migration Policy Institute, migrants report an “increased presence of immigration officials in pickup trucks patrolling the roads and bus stations en route to the train line. Raids on hotels and restaurants where migrants shelter in traditional cities [i.e., cities along previously established migrant routes] have occurred. And immigration agents, in raids supported by federal

police and the military, are targeting the trains, removing migrants from the train cars and detaining them.²⁶ The companies that run the cargo trains on whose roofs migrants travel (referred to as “La Bestia”) also are working with the Mexican government to increase train speed in order to prevent migrants from riding on them.²⁷

Deportations from Mexico to the Northern Triangle countries increased significantly over the course of 2014, and this trend has continued into 2015. Mexico apprehended more than 15,795 minors between January and August of 2014, compared to 9,727 minors for all of 2013.²⁸ According to a Pew Research Center analysis of data from the Mexican government, Mexico deported 3,819 unaccompanied minors from Central America during the first five months of FY 2015—a 56% increase over the same period from FY 2014.²⁹

A report by the Human Rights Institute at Georgetown Law School found that while “Mexican officials are supposed to screen unaccompanied children for international protection needs, they often fail to meet this responsibility.”³⁰ The report also found that the detention conditions deterred children from accessing the asylum process and that the Mexican government is failing to consistently inform children of their rights or screen them for international protection eligibility.³¹ Without these practices, the report argued, “current practices place a burden on migrant children to investigate the law and procedures and affirmatively apply for asylum.”³²

What is in-country processing?

In November 2014, the U.S. Department of State announced the launch of its in-country refugee processing program in El Salvador, Guatemala, and Honduras. The program is intended “to provide a safe, legal, and orderly alternative to the dangerous journey that some children are currently undertaking to the United States.”³³ The new program allows parents from El Salvador, Guatemala, and Honduras who are lawfully present in the United States to submit an application to have their children join them in the United States if they qualify for refugee status or humanitarian parole.

Parents may submit applications for this program to the State Department. Once the application is submitted, the International Organization for Migration (IOM) will work with the child in country and invite them to pre-screening interviews. Both the child and the parent will have to submit to DNA testing to ensure the biological relationship, and DHS will conduct an interview for refugee eligibility. As with all refugees, the children will have to submit to and pass security checks to be eligible for refugee status.³⁴ If they do not qualify for refugee status, it is possible that they may qualify for humanitarian parole on a case-by-case basis. Although humanitarian parole permits a person to travel safely to the United States to reunite with a parent, unlike refugee status, it does not provide a path to citizenship.

While this program will help some eligible children and a parent, its impact is expected to be limited. Any refugees admitted under this program would count against the current limit of 4,000 refugee admissions for Latin America and the Caribbean. In contrast, 68,541 children crossed the border in FY 2014. The program itself is rigorous, and its requirements—a parent with legal status and DNA and security checks—will limit who qualifies. Eleanor Acer of Human Rights First argued that “[p]ractically speaking, the program will need to actually extend protection in a timely manner to a meaningful number of applicants if it is to be viewed as a credible alternative to some families with at-risk children.” Additionally, Acer note that in the past, U.S. officers have used “the existence of in-country resettlement...to limit access to protection.”³⁵

PROCEDURES AND POLICIES: WHAT HAPPENS TO CHILDREN AND FAMILIES WHEN THEY ARRIVE AT THE BORDER?

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

How a noncitizen is treated upon apprehension depends on where the person is apprehended (near the border or in the interior), what country he or she is from (a contiguous country or a noncontiguous country), and whether he or she is an unaccompanied minor.

Adults and families, when apprehended in the interior, typically are placed in removal proceedings before an immigration judge.³⁶ However, that is not necessarily the case for adults or families apprehended at or near the border. In FY 2013, 83 percent of adults removed by the U.S. were deported through summary, out-of-court removal proceedings by a DHS officer rather than appearing before an immigration judge.³⁷ The most common summary removal processes are expedited removal, used when a noncitizen encounters immigration authorities at or within 100 miles of a U.S. border with insufficient or fraudulent documents,³⁸ and reinstatement of removal, used when a noncitizen unlawfully reenters after a prior removal order.³⁹

As discussed in detail below, unaccompanied children receive greater protections under U.S. law.

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

The majority of unaccompanied children encountered at the border are apprehended, processed, and initially detained by CBP.⁴⁰ Unlike adults or families, though, unaccompanied children cannot be placed into expedited removal proceedings.⁴¹

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

Each child from a contiguous country—Mexico or Canada—must be screened by a CBP officer to determine if he or she is unable to make independent decisions, is a victim of trafficking, or fears persecution in his home country. If none of these conditions apply, CBP will immediately send the child back to Mexico or Canada through a process called “voluntary return.” Return occurs pursuant to agreements with Mexico and Canada to manage the repatriation process.⁴²

Non-governmental organizations (NGOs) have expressed concern that CBP is the “wrong agency” to screen children for signs of trauma, abuse, or persecution.⁴³ The public justice group Appleseed issued a report that stated, “as a practical matter” CBP screening “translates into less searching inquiries regarding any danger they are in and what legal rights they may have.”⁴⁴ Appleseed also expressed concern that the U.S.-Mexico repatriation agreement has been geared towards “protocols of repatriations logistics,” rather than best practices for child welfare.⁴⁵

Do children get attorneys?

In general, children facing deportation—just like adults facing deportation—are not provided government-appointed counsel to represent them in immigration court. Under the immigration laws, all persons have the “privilege” of being represented “at no expense to the Government.”⁴⁶ This means that only those individuals who can afford a private lawyer or those who are able to find pro bono counsel to represent them free of charge are represented in immigration court. And, although Congress has directed the Secretary of Health and Human Services (HHS) to ensure the provision of counsel to unaccompanied children “to the greatest extent practicable,” Congress further explained that the Secretary “shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.”⁴⁷

A vast network of pro bono legal service providers has responded to the call, and during the past year, the Obama Administration provided some funding to legal service providers in order to increase representation for unaccompanied children. The justice AmeriCorps program, announced in June 2014, awarded \$1.8 million for representation of certain children in immigration court,⁴⁸ and HHS subsequently provided an additional \$9 million for representation in FY 2014 and FY 2015.⁴⁹

But while pro bono legal service providers represent many children nationwide, they still are unable to meet the need. As of April 2015, children in over 38,000 pending cases remained unrepresented.⁵⁰ These children are forced to appear before an immigration judge and navigate the immigration court process, including putting on a legal defense, without any legal representation. In contrast, DHS, which acts as the prosecutor in immigration court and argues for the child’s deportation, is represented in every case by a lawyer trained in immigration law. As a result, advocates, including the American Immigration Council, filed a nationwide class-action lawsuit challenging the federal government’s failure to provide children with legal representation in immigration court. The case, *JEFM v. Holder*, is currently pending before a federal district court in Washington State.

How have immigration courts responded to the increased volume of cases?

In the summer of 2014, the Executive Office for Immigration Review (EOIR), the division within the Department of Justice which houses the immigration courts, adopted a new policy with respect to prioritizing cases for adjudication. The stated goal of this new policy was to “[f]ocus the department’s immigration processing resources on recent border crossers” (i.e., individuals who arrived on or after May 1, 2014). Under the policy, the immigration courts are to prioritize the following cases: (1) unaccompanied children who recently crossed the southwest border; (2) families who recently crossed the border and are held in detention; (3) families who recently crossed the border but are on “alternatives to detention” and (4) other detained cases.⁵¹ Immigration courts now schedule a first hearing for unaccompanied children within 21 days of the court’s receiving the case.⁵² Given the speed at which these cases progress, the expedited children’s dockets often are referred to as “rocket dockets.” Children on the rocket dockets may be provided with less time to find attorneys before immigration courts move forward with their cases—and, as a result, may be required to explain why they should not be deported without the help of an attorney. If they are unable to do so, unrepresented children may be ordered removed or required to “voluntarily” depart from the United States.⁵³

Can unaccompanied children be detained?

Yes, but special laws govern the custody of children based on child welfare standards that take the “best interests” of the child into account. Unaccompanied children must be transferred by DHS to the custody of HHS within 72 hours of apprehension, under the Homeland Security Act of 2002 and TVPRA of 2008.⁵⁴ HHS’s Office of Refugee Resettlement (ORR) then manages custody and care of the children until they can be released to family members or other individuals or organizations while their court proceedings go forward.

Under the TVPRA of 2008, HHS is required to “promptly place” each child in its custody “in the least restrictive setting that is in the best interests of the child.”⁵⁵ As such, children in ORR care are generally housed through a network of state-licensed, ORR-funded care providers, who are tasked with providing educational, health, and case management services to the children.⁵⁶

Under international law, children “should in principle not be detained at all,” according to UNHCR.⁵⁷ Detention, if used, should only be a “measure of last resort” for the “shortest appropriate period of time,” with an overall “ethic of care.”⁵⁸ Detention has “well-documented” negative effects on children’s mental and physical development,⁵⁹ including severe harm such as anxiety, depression, or long-term cognitive damage, especially when it is indefinite in nature.⁶⁰

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

Can unaccompanied children be released from custody?

Yes. ORR seeks to reunify children with family members or release them to other individual or organizational sponsors whenever possible, on the grounds that children’s best interests are served by living in a family setting. ORR also is required to ensure that individuals taking custody of the children are able to provide for their well-being.⁶¹ Federal regulations, following a court settlement in the case *Flores v. Reno*, outline the following preferences for sponsors: (1) a parent; (2) a legal guardian; (3) an adult relative; (4) an adult individual or entity designated by the child’s parent or legal guardian; (5) a licensed program willing to accept legal custody; or (6) an adult or entity approved by ORR.⁶² The sponsor must agree to ensure that the child attends immigration court.

As of May 2014, ORR reported that the average length of stay in its facilities was approximately 35 days and that about 85 percent of the children served are released while their deportation proceedings are in progress.⁶³

Does the Government detain families?

Yes. The increase in families fleeing violence and arriving at the southwest border—frequently mothers with children—has reignited a debate over the appropriate treatment of families in the immigration system. Family immigration detention has a complicated and troubled history in the U.S.⁶⁴

Prior to 2006, ICE commonly detained parents and children separately. In FY 2006 appropriations language, however, Congress directed ICE to either “release families,” use “alternatives to detention

such as the Intensive Supervised Appearance Program,” or, if necessary, use “appropriate” detention space to house families together.⁶⁵ ICE responded by opening the T. Don Hutto Residential Center in Texas, with over 500 beds for families. But, as the Women’s Refugee Commission explained, the “Residential Center” was a “former criminal facility that still look[ed] and [felt] like a prison.”⁶⁶ The Hutto detention center became the subject of a lawsuit, a human rights investigation, multiple national and international media reports, and a national campaign to end family detention.⁶⁷ In 2009, ICE ended the use of family detention at Hutto, withdrew plans for three new family detention centers, and said that detention would be used more “thoughtfully and humanely.”⁶⁸

Yet, in the summer of 2014, in response to the increase in families fleeing violence and arriving at the southwest border, the federal government established a makeshift detention center on the grounds of the Federal Law Enforcement Training Center in Artesia, New Mexico, a remote location more than three hours’ drive from the nearest major city. According to the DHS Secretary, the detention and prompt removal of families was intended to deter others from coming to the United States.⁶⁹

Over the course of the summer and fall 2014, over hundreds of women and children were detained in Artesia. The facility was ultimately closed several months later, but the government has continued its policy of detaining women and children. Currently families are housed in three facilities: the South Texas Family Residential Center in Dilley, Texas, Karnes County Residential Center in Karnes City, Texas, and Berks Family Residential Center in Leesport, Pennsylvania. Both the Dilley and Karnes facilities are owned and operated by private prison companies. By the end of May 2015, Dilley’s capacity will be 2,400, making it by far the largest family detention center in the United States.

Family detention is rarely in the “best interests of the child,” as opposed to community-based alternatives.⁷⁰ Detaining children leads to serious mental health problems and chronic illnesses, and detaining families can have long-lasting effects on the psychological well-being of both parents and children.⁷¹

In 2014 and 2015, several detained families filed lawsuits to challenge various aspects of family detention. One case challenges the government’s policy of detaining families as a means to deter others from coming to the United States. In this case, *RILR v. Johnson*, a federal court issued a preliminary injunction to prevent the government from using deterrence as a factor in making a bond determination.⁷² In a second case, lawyers for children held in family detention facilities have claimed that the government is violating the terms of the settlement agreement in *Flores*, discussed above. This settlement established national standards for the detention, release and treatment of children detained by DHS for deportation.

Can alternatives to detention be used for families?

Yes. ICE operates two alternatives to detention (ATD) programs for adult detainees—a “full service” program with case management, supervision, and monitoring (either by GPS or telephone check-in), and a “technology-only” program with monitoring only.⁷³ According to U.S. government data, 95 percent of participants in ICE’s full service program appeared at scheduled court hearings from fiscal years 2011 to 2013.⁷⁴ Further, in FY 2012 only 4 percent were arrested by another law enforcement agency.⁷⁵ ICE’s alternatives program, as well as being more humane, is also less expensive than detention—\$10.55/day as opposed to \$158/day.⁷⁶ As to asylum seekers, a prior

U.S. government-commissioned study found that “asylum seekers do not need to be detained to appear,” and “[t]hey also do not seem to need intensive supervision.”⁷⁷ Bipartisan support has emerged for alternatives to immigration detention.⁷⁸ ICE, in early 2015, issued requests for proposals for “family case management services” for up to 300 families apiece in Baltimore/Washington, NYC/Newark, Miami, Chicago and Los Angeles.⁷⁹

U.S. GOVERNMENT RESPONSE, AND OTHER PROPOSED RESPONSES

During the summer of 2014, the Obama Administration’s response to Central American children and families arriving in the U.S. focused largely on enforcement measures, rather than humanitarian measures that had previously received legislative support, and would have been more tailored towards the vulnerable arriving population.

The Administration requested significant funding to support an “aggressive deterrence strategy” and implemented family detention and “rocket docket” for children and families. Its in-country refugee processing program has been expected to assist relatively few people. Congressional legislative proposals, at the time and since, have largely focused on rolling back procedural protections for children. That said, proposals also exist to more holistically protect children and families reaching the United States, several of which passed the Senate in 2013 as part of its comprehensive immigration reform bill.

U.S. Government Response—Administration’s and Congress’ Actions

The following table summarizes the Administration’s and Congress’ major actions since summer 2014:

Date	Who	Action Taken
June 2, 2014	President Obama	Declared “ urgent humanitarian situation ” and directed a coordinated federal response under emergency homeland security authorities. ⁸⁰
June 20, 2014	DHS	Announced intention to detain families at the Border Patrol training center in Artesia, NM. ⁸¹ Detainees arrived in Artesia around the beginning of July. ⁸²
June 30, 2014	President Obama	Sent letter to Congressional leaders declaring intent to seek emergency funding for “an aggressive deterrence strategy focused on the removal and repatriation of recent border crossers.” ⁸³
July 8, 2014	President Obama	Sent letter to Speaker Boehner (attaching OMB analysis) requesting \$3.7 billion in emergency appropriations. ⁸⁴ Request included: ⁸⁵ <ul style="list-style-type: none"> • HHS: \$1.8 billion for care of unaccompanied children • DHS-ICE: \$1.1 billion (incl. \$879 million for detention and removal) • DHS-CBP: \$432 million (incl. \$364 million for additional apprehensions) • State: \$295 million in Central American foreign aid • DOJ-EOIR: \$45 million for additional immigration judges, \$15 million to provide lawyers for children.
July 9, 2014	DOJ-EOIR	Immigration courts prioritized cases of recent border crossers who are unaccompanied children, families in detention, and families on alternatives to detention. ⁸⁶

July 11, 2014	DHS	Modified contract with Karnes County, TX to detain families at ICE's existing detention facility for adults there. ⁸⁷
July 31, 2014	Senate	Bill to provide \$2.7 billion in emergency appropriations failed in procedural vote. ⁸⁸
August 1, 2014	House of	<ul style="list-style-type: none"> • Passed legislation to repeal DACA.⁸⁹ • Also passed legislation to provide \$694 million in emergency appropriations,⁹⁰ and the "Secure the Southwest Border Act" to roll back procedural protections for Central American unaccompanied children.⁹¹
August 1, 2014	DHS	<ul style="list-style-type: none"> • Announced intent to transfer \$405 million from other DHS programs to address humanitarian challenge. Congressional Appropriations Committees finished approving transfers to ICE on August 6.⁹² • ICE began to detain families at Karnes, TX detention facility.⁹³
September 22, 2014	DHS	Agreed to pay town of Eloy, AZ to modify its existing agreement with ICE so that the private company CCA can build a new family detention facility in Dilley, TX. ⁹⁴ DHS publicly confirmed the opening of Dilley the next day. ⁹⁵
November 18, 2014	DHS	Announced ICE will close the Artesia, NM family detention facility and transfer the detainees to the new Dilley, TX family detention facility. ⁹⁶
December 3, 2014	State Dep't	Launched in-country refugee processing program in El Salvador, Guatemala, and Honduras. ⁹⁷
December 16, 2014	Congress and President Obama	<p>FY 2015 "Cromnibus" appropriations bill, signed by President, provided:⁹⁸</p> <ul style="list-style-type: none"> • HHS: \$80 million increase to care for unaccompanied children⁹⁹ • State: \$260 million to implement a "prevention and response strategy" in Central America¹⁰⁰ • DOJ-EOIR: \$35 million increase for immigration courts¹⁰¹ • Education: \$14 million to assist state and local educational agencies experiencing increases in immigrant youth.¹⁰²
February 2, 2015	President Obama and DHS	<p>The Administration's request for DHS funding for FY 2016 included:¹⁰³</p> <ul style="list-style-type: none"> • DHS-ICE: \$893 million for salaries and expenses over FY '15 request, incl. \$615 million increase for detention (\$435 million for family detention) • DHS-CBP: \$743 million increase for salaries and expenses over FY '15 request.
March 4, 2015	Congress and President Obama	<p>FY 2015 DHS Appropriations bill, signed by President, provided:¹⁰⁴</p> <ul style="list-style-type: none"> • DHS-ICE: \$703 million increase for salaries and expenses, incl. \$539 million increase for detention (\$362 million for family detention)¹⁰⁵ • DHS-CBP: \$314 million increase for salaries and expenses over FY '14.
May 27 and June 1, 2015	House and Senate	136 Representatives and 33 Senators wrote letters asking DHS Secretary Johnson to end family detention. ¹⁰⁶

Recent Legislative Proposals

Since the summer of 2014, most legislative proposals have focused on rolling back the procedural protections that the TVPRA affords to Central American unaccompanied children. For example, the House's 2014 "Secure the Southwest Border Act" would have amended the TVPRA to (1) treat children from non-contiguous countries similarly to Mexican and Canadian children, but (2) strike the current requirement that the child be able to make an "independent decision to withdraw the child's application for admission" before proceeding with voluntary return; (3) require those children who may have been trafficked or fear return [or require the remaining children] to appear before an immigration judge for a hearing within 14 days of screening; and (4) impose mandatory detention until that hearing.¹⁰⁷

Other proposals have offered variations on these themes. For example, the "Protection of Children Act of 2015," which the House Judiciary Committee moved forward on March 4, 2015, would enact the above four changes—but additionally, expand from 72 hours to 30 days the time limit for CBP to transfer remaining unaccompanied children to HHS custody.¹⁰⁸ That bill, among others, also proposes restricting HHS' ability to provide counsel to unaccompanied children.¹⁰⁹ Or, the "HUMANE Act," sponsored by Sen. John Cornyn (R-TX) and Rep. Henry Cuellar (D-TX) in 2014,¹¹⁰ would have gone further to place children with a fear of return into a new 7-day expedited process, during which the child would be required to prove her eligibility for immigration relief to an immigration judge while mandatorily detained, before moving on to a standard removal proceeding in immigration court.¹¹¹

Proposed Solutions

Before summer 2014, bipartisan support existed for legislative reforms to more holistically protect children and families reaching the United States. Since then, NGOs and advocacy groups have reiterated support for those reforms, as well as for aid to address root causes of child and family migration from Central America.

These reforms include:

Incorporating a "best interests of the child" standard into all decision-making, not just custody decisions.¹¹²

Bipartisan immigration reform legislation which passed the Senate in 2013 (S. 744) would have required the Border Patrol, in making repatriation decisions, to give "due consideration" to the best interests of a child, "family unity," and "humanitarian concerns."¹¹³ Amendment 1340 to S. 744, which was not voted on as part of a compromise, would have made the best interests of a child the "primary consideration" in all federal decisions involving unaccompanied immigrant children.¹¹⁴ Organizations have also recommended adopting more child-specific procedures.¹¹⁵

Child welfare screening to replace or augment Border Patrol screening. Border Patrol agents are currently tasked with screening Mexican and Canadian children for trafficking and persecution and preventing their return to persecutors or abusers. NGOs have uniformly questioned Border Patrol's ability to do so adequately,¹¹⁶ and reform proposals have ranged from improved training for CBP officers (included in S. 744),¹¹⁷ to pairing CBP screeners with child welfare experts (also in S. 744)¹¹⁸ or NGO representatives,¹¹⁹ to replacing CBP screeners with USCIS asylum officers.¹²⁰ CBP Commissioner Kerlikowske recently expressed openness towards similar proposals.¹²¹

Due process protections and resources. NGOs have advocated for a system that provides procedural protections and resources to appropriately protect children and families from violence, under international and U.S. laws, without unduly delaying decision making.¹²² Proposals include appointed counsel,¹²³ additional resources to legal orientation programs¹²⁴ and additional resources to backlogged immigration courts (all included in S. 744).¹²⁵ More recent proposals also include additional U.S. Citizenship and Immigration Services (USCIS) asylum officers,¹²⁶ and additional post-release caseworker services, to protect children, assist families, and ensure attendance at proceedings.¹²⁷

Detention reforms. NGOs have proposed that children be detained as little as possible,¹²⁸ released to families or other sponsors whenever appropriate,¹²⁹ and if detained, supervised in a community-based setting¹³⁰ because of detention's severe impact on children.¹³¹ At least one Senator has promised legislation to end the detention of asylum-seeking families if no family member poses a threat to the public or a flight risk.¹³² Along these lines, organizations and legislators have recommended improving detention conditions,¹³³ and expanding alternatives to detention (as S. 744 proposed),¹³⁴ by reallocating detention funding to those cheaper alternatives.¹³⁵

Aid to sending countries. NGOs have proposed aid to sending countries and Mexico, to invest in systems that protect and care for children, help youth live productive lives, and ultimately reduce violence and address root causes of flight.¹³⁶ In January 2015, the White House announced it was seeking \$1 billion in Central American assistance in its FY 2016 budget.¹³⁷

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⁸⁶ Department of Justice, “EOIR Factsheet on New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/iso/opa/resources/214201479112444959.pdf>; Department of Justice, “EOIR Announcement of New Priorities to Address Migrants Crossing into the U.S.,” July 9, 2014, <http://www.justice.gov/opa/pr/department-justice-announces-new-priorities-address-surge-migrants-crossing-us>.

⁸⁷ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁸⁸ The bill did not include DACA repeal or rollbacks of procedural protections. “Emergency Supplemental Appropriations Act, 2014,” S. 2648, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2648>. This bill appropriated \$1.2 billion to HHS, \$763 million to ICE (with no limit on detention funding), \$343 million to CBP, over \$60 million for immigration judges, \$50 million for lawyers for unaccompanied children, \$212.5 million to the President’s “Economic Support Fund” to address root causes of Central American migration, and \$85 million to the Department of State for “International Narcotics Control and Law Enforcement.” U.S. Senate Committee on Appropriations, “Chairwoman Mikulski Releases Summary of Emergency Supplemental Funding Bill,” July 23, 2014, <http://www.appropriations.senate.gov/news/chairwoman-mikulski-releases-summary-emergency-supplemental-funding-bill>. The bill died in a cloture vote, with 50 Senators voting to continue and 44 opposed. Democratic Sens. Mary Landrieu of Louisiana and Joe Manchin of West Virginia joined with Republicans in opposing the bill. Elise Foley, “Senate Fails on Border Control Funding,” *Huffington Post*, July 31, 2014, at http://www.huffingtonpost.com/2014/07/31/senate-border-crisis_n_5639727.html.

⁸⁹ “An Act to prohibit certain actions with respect to deferred action for aliens . . .,” H.R. 5272, 113th Cong. (2014), <https://www.congress.gov/bill/113th-congress/house-bill/5272>. The bill passed 216 to 192, largely along party lines. “Four Democrats -- Reps. John Barrow (D-Ga.), Nick Rahall (D-W.Va.) Mike McIntyre (D-N.C.) and Collin Peterson (D-Minn.) -- voted with Republicans. A larger group of 11 Republicans voted with Democrats against the bill: Reps. Jeff Denham (R-Calif.), David Valadao (R-Calif.), Cory Gardner (R-Colo.), Mike Coffman (R-Colo.), Ileana Ros-Lehtinen (R-Fla.), Mario Diaz Balarit (R-Fla.), Dave Reichert (R-Wash.), Adam Kinzinger (R-Ill.), Joe Heck (R-Nev.), Mark Amodei (R-Nev.) and Fred Upton (R-Mich.).” Elise Foley, “House Votes To Strip Deportation Relief From Dreamers,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-bill-daca_n_5643287.html.

⁹⁰ “An Act making supplemental appropriations . . .,” H.R. 5230, 113th Cong., <https://www.congress.gov/bill/113th-congress/house-bill/5230>. That bill appropriated \$197 million to HHS, \$334 million to ICE (\$262 million for detention), \$71 million to CBP, \$70M to various National Guard units, \$40 million in Central American aid, and \$22 million for temporary immigration judges and video technology. *Ibid.*, Division A, “Supplemental Appropriations and Rescissions.” The bill also expanded waivers of other federal laws (such as environmental laws) for CBP activities on federal land, but prohibited placing unaccompanied alien children at military installations if it would “interfere with activities of the Armed Forces.” *Ibid.*, Division B, Title III. The bill passed 223 to 189. One Democrat, Rep. Henry Cuellar of Texas, joined Republicans voting for the bill, while four Republicans joined Democrats in opposition: Reps. Stephen Fincher of Tennessee, Paul Broun of Georgia, Thomas Massie of Kentucky and Walter Jones of North Carolina. Elise Foley, “House Passes Dead-On-Arrival Bill to Address Border Crisis,” *Huffington Post*, Aug. 1, 2014, http://www.huffingtonpost.com/2014/08/01/house-border-hill_n_5643259.html.

⁹¹ “Secure the Southwest Border Act of 2014,” H.R. 5230, 113th Cong., Division B, Title I, at <https://www.congress.gov/bill/113th-congress/house-bill/5230>. Other sections in this Title would have prioritized removal hearings for unaccompanied children for those children whom had “most recently arrived” (i.e., “last in, first out”) (Sec. 102); directed EOIR to designate up to 40 temporary immigration judges for the duration of the humanitarian crisis (Sec. 103); tightened screenings for custodians of unaccompanied children to require “a mandatory biometric criminal history check” based on fingerprints, and prohibit as custodians whom had been convicted of a sex offense or human trafficking (Sec. 104); and unrelated to unaccompanied children, barred from asylum any individual who had committed “any drug-related offense punishable by a term of imprisonment greater than 1 year” before arriving in the United States (Sec. 105).

⁹² Mark Felsenthal, “U.S. administration transferring \$405 million for border operations,” Reuters (Aug. 1, 2014) (DHS notified Congress on August 1 that it would “reprogram” funds), at <http://news.yahoo.com/u-administration-transferring-405-million-border-operations-024645833.html>. Ultimately, DHS reprogrammed \$333.8 million from other DHS agencies into ICE—\$267.6 million from the Federal Emergency Management Agency’s (FEMA’s) disaster relief fund, \$31.5 million from the Coast Guard, and \$34.7 million from the Transportation Security Administration (TSA) into (1) ICE’s Custody Operations account (\$261.1 million), which operates ICE detention, and (2) ICE’s Transportation and Removal Programs account (\$72.7 million), which operates planes that deport individuals. U.S. DHS, “Budget-in-Brief Fiscal Year 2016,” p. 54, February 5, 2015, <http://www.dhs.gov/publication/ty-2016-budget-brief>. The Senate Appropriations Committee approved that transfer on August 4, and the House Appropriations Committee approved that transfer on August 6. *Ibid.* Reuters also reported on August 1 that CBP would internally move \$70.5 million from other activities to “meet increased demands from the border situation.” It is not clear from public budget documents if and from where that transfer occurred.

⁹³ U.S. DHS, “South Texas ICE Detention Facility to House Adults With Children,” July 31, 2014, <http://www.dhs.gov/news/2014/07/31/south-texas-ice-detention-facility-house-adults-children>.

⁹⁴ John Burnett, “How Will A Small Town In Arizona Manage An ICE Facility In Texas?,” NPR, Oct. 28, 2014, <http://www.npr.org/2014/10/28/359411980/how-will-a-small-town-in-arizona-manage-an-ice-facility-in-texas>; “City of Eloy Request for Council Action,” requested Sept. 17, 2014 (obtained through the Freedom of Information Act, on file with American Immigration Council).

⁹⁵ Daniel González, “Feds detaining migrant families despite criticism,”

Arizona Republic, Sept. 24, 2014, <http://www.azcentral.com/story/news/politics/immigration/2014/09/24/migrant-family-detentions-expanded-despite-criticism/16139209/>.

⁹⁶ Amanda Peterson Beadle, “DHS Announces the Transfer of Immigrant Families from Artesia to New Facility,” *Immigration Impact*, Nov. 18, 2014, <http://immigrationimpact.com/2014/11/18/dhs-announces-transfer-immigrant-families-artesia-new-facility/#:sthash.6kRqlyWw.dpuf>.

⁹⁷ U.S. Department of State, “Launch of In-Country Refugee/Parole Program for Children in El Salvador, Guatemala, and Honduras with Parents Lawfully Present in the United States,” Dec. 3, 2014, <http://www.state.gov/r/pa/prs/ps/2014/12/234655.htm>.

⁹⁸ “Consolidated and Further Continuing Appropriations Act, 2015,” H.R. 83, Pub. L. No. 113-235, 113th Congress, Dec. 16, 2014, <https://www.congress.gov/bill/113th-congress/house-bill/83/text>.

⁹⁹ *Ibid.*, Division G, Title II, “Administration for Children and Families, Refugee and Entrant Assistance”; see also U.S. Senate Committee on Appropriations, “Summary: Fiscal Year 2015 Omnibus Appropriations Bill,” Dec. 9, 2014, p. 34 [hereinafter “Senate Omnibus Summary”], <http://www.appropriations.senate.gov/newsroom/summary-fiscal-year-2015-omnibus-appropriations-bill>.

¹⁰⁰ *Ibid.*, Division J, Title VII, Sec. 7045(a) (“Central American Migration Prevention and Response,”) and (d) “Guatemala,” (f) “Honduras,” and (g) “Mexico.” See also Senate Omnibus Summary, note 99, p. 53. Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations Regarding the House Amendment to the Senate Amendment on H.R. 83, Cong. Record H9307-H10003, at p. H9951-52, H9956-57 (Dec. 11, 2014) [hereinafter “Omnibus Explanatory Statement”], available at <https://www.congress.gov/crec/2014/12/11/CREC-2014-12-11-pt2-PgH9307.pdf>.

¹⁰¹ *Ibid.*, Division B, Title II, “Administrative Review and Appeals.” See also U.S. DOJ, “Administrative Review and Appeals, Executive Office for Immigration Review (EOIR), FY 2015 Budget Request At a Glance,” accessed May 31, 2015, p. 1-2 (requesting \$35 million increase for FY 2015, from \$312.2 million to \$347.2 million), <http://www.justice.gov/sites/default/files/imm/legacy/2014/07/09/eoir.pdf>; Omnibus Explanatory Statement, note 100, p. H9345. The Explanatory Statement states, “The agreement includes funding for 35 new Immigration Judge Teams Allowing EOIR to adjudicate up to 39,000 more cases annually.” *Ibid.* The Explanatory Statement also provides generally supportive language regarding legal orientation programs and lawyers for children, although it does not provide specific funding amounts. *Ibid.* (“Within the amounts provided, EOIR shall take steps as specified in the House and Senate reports to expand adjudication capacity, enhance the Legal Orientation Program, improve court efficiency and better serve vulnerable populations such as children through continuation of fiscal year 2014 pilot programs.”).

¹⁰² *Ibid.*, Division G, Title III, “English Language Acquisition.”

¹⁰³ U.S. DHS, “Congressional Budget Justification FY 2016,” Feb. 2, 2015, <http://www.dhs.gov/publication/congressional-budget-justification-fy-2016>.

¹⁰⁴ Department of Homeland Security Appropriations Act, 2015, H.R. 240, Pub. L. No. 114-4, Mar. 4, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/240/text>. See also Mark Noferi, “DHS Funding Controversy Over, But Enforcement-First Approach Remains,” *Immigration Impact*, Mar. 6, 2015, <http://immigrationimpact.com/2015/03/06/dhs-funding-controversy-enforcement-first-approach-remains/>.

¹⁰⁵ Explanatory Statement Submitted By Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations, Regarding H.R. 240, Department of Homeland Security Appropriations Act, 2015, Jan. 15, 2015, <http://docs.house.gov/bills/thisweek/20150112/114-HR240-ES.pdf>, pp. 25-26.

¹⁰⁶ Roque Planas, “House Democrats Tell Obama Administration to End Family Detention,” *Huffington Post*, May 27, 2015, http://www.huffingtonpost.com/2015/05/27/democrats-family-detention_n_7453008.html; Elise Foley, “Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On,” *Huffington Post*, June 2, 2015, http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html.

¹⁰⁷ “Secure the Southwest Border Act of 2014,” note 91, Sec. 101, amending U.S.C. § 1232(a)(2), (5).

¹⁰⁸ “Protection of Children Act of 2015,” H.R. 1149, 114th Cong., Sec. 2, <https://www.congress.gov/bill/114th-congress/house-bill/1149/text>.

¹⁰⁹ *Ibid.*, Sec. 2(a)(3)(b), amending 8 U.S.C. § 1132(c)(5), to change the statutory direction to HHS from ensuring that children “have counsel” to “have access to counsel” (emphasis added), and clarifying that such access will be “at no expense to the Government.” See also “Asylum Reform and Border Protection Act of 2015,” H.R. 1153, 114th Cong., Sec. 2 (“Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in removal proceedings”), <https://www.congress.gov/bill/114th-congress/house-bill/1153/text>.

¹¹⁰ “Helping Unaccompanied Minors and Alleviating National Emergency Act” (HUMAN Act), S. 2611, 113th Cong., <https://www.congress.gov/bill/113th-congress/senate-bill/2611/text>.

¹¹¹ *Ibid.* at Secs. 101(1)-(2), 102.

¹¹² The “best interests of the child” standard is internationally recognized. In the U.S. child welfare system, it applies special importance to “family integrity, health, safety, protection of the child, and timely placement.” The United States Conference of Catholic Bishops (USCCB) has thus recommended a “transnational family approach,” with a holistic assessment of all family members for potential reunification, performed by child welfare professionals. United States Conference of Catholic Bishops (USCCB), Testimony of Most Reverend Mark Seitz, Bishop of the Diocese of El Paso, Texas, House Judiciary Committee, June 25, 2014, [hereinafter USCCB HJC Testimony], http://judiciary.house.gov/_cache/files/c8aea408-278a-4f3a-9fac-c790681f2611/bishop-mark-seitz-uac-hearing-testimony.pdf, p. 12.

¹¹³ “Border Security, Economic Opportunity, and Immigration Modernization Act,” S. 744, 113th Cong., Sec. 1115(b)(1)(B), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>. If repatriation occurs, the ABA first recommends screening by a legal advocate, and the involvement of a formal intercountry child welfare agency. James Silkenat, President, American Bar Association, Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014, [hereinafter ABA HJC Statement], http://www.americanbar.org/content/dam/aba/unacategorized/GAO/2014june25_unaccompaniedalienminors_t_authcheckdam.pdf, p. 3.

¹¹⁴ S. 744, 113th Cong., Amt. 1340, <https://beta.congress.gov/amendment/113th-congress/senate-amendment/1340/text>. See also The Young Center for Immigrant Children’s Rights, <http://theyoungcenter.org/news/historic-senate-bill-protecting->

¹¹⁵ USCCB and others have thus recommended procedures reflecting this paradigm—an appointed lawyer and child advocate in the process, repatriation only after screening by a child welfare advocate, the development of child-appropriate asylum procedures, and separate children’s dockets in immigration court, with specialized training for judges. USCCB HJC Testimony, note 112, p. 11-12; National Immigrant Justice Center (NIJC), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014 [hereinafter NIJC HJC Statement], <http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20statement%20for%20House%20Judiciary%20Hearing%20on%20Unaccompanied%20Children%206-25-14.pdf>, p. 8. S. 744 would also have instituted a multi-year program to ensure “safe and sustainable repatriation.” S. 744, 113th Cong., Sec. 3612 (j), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>.

¹¹⁶ Appleseed, *Children at the Border*, 2011, note 43, p. 6, 32. As one organization put it, children “do not divulge their complex histories of abuse and neglect during a first meeting with strangers,” let alone “armed strangers in uniform.” Center for Refugee and Gender Studies, *Calling on President Obama to Protect Child Migrants*, June 30, 2014 (relaying story of child who only divulged details of rape to her attorney), <http://cgrrs.uchastings.edu/our-work/june-2014-policy-statement-children>. Border Patrol representatives have also publicly expressed frustration with assuming a child welfare role. CBP union head Brandon Judd stated, “Forty percent of our agents have been pulled from the field to babysit, clean cells, change diapers. . . . That’s not our job.” David Nakamura, “Border agents decry ‘Diaper Changing, Burrito Wrapping’ with influx of children,” *Washington Post*, June 20, 2014, http://www.washingtonpost.com/politics/border-agents-decry-diaper-changing-burrito-wrapping-with-influx-of-children/2014/06/20/1a6b6714-f579-11e3-8aa9-dad2ec039789_story.html.

¹¹⁷ S. 744, 113th Cong., Sec. 3611 (requiring training by child welfare professionals of CBP officials “likely to come into contact with unaccompanied alien children”), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3611.html>; Sec. 1115(c) (requiring training on preserving children’s best interests), <http://www.lawandsoftware.com/bseoima/bseoima-senate-1115.html>; see also Women’s Refugee Commission, *Halfway Home*, Feb. 2009, note 43, p. 2; American Immigration Lawyers Association (AILA), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014 [hereinafter AILA HJC Statement], <http://www.aila.org/content/default.aspx?docid=49015>, p. 6.

¹¹⁸ “Child Trafficking Victims Prevention Act,” S. 744, 113th Cong., Sec. 3612(d), (e), (requiring HHS to hire child welfare professionals to be placed in seven largest Border Patrol offices, screen children, and provide assessments), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3612.html>; USCCB HJC Testimony, note 112, p. 10.

¹¹⁹ Lutheran Immigration and Refugee Service (LIRS), Statement before the Committee on the Judiciary of the U.S. House of Representatives, for the record of the hearing on “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors,” June 25, 2014, p. 2 [hereinafter LIRS HJC Statement] (on file with American Immigration Council).

¹²⁰ Appleseed, *Children at the Border*, 2011, note 43, p. 6.

¹²¹ Mark Noferi, “Commissioner Kerlikowske Offers Vision of Change at CBP,” *Immigration Impact*, Apr. 24, 2015, at <http://immigrationimpact.com/2015/04/24/commissioner-kerlikowske-offers-vision-of-change-at-cbp/>,

[er-kerlikowske-offers-vision-of-change-at-cbp/](#), citing House Committee on Appropriations, “Budget Hearing - United States Customs and Border Protection” (Apr. 23, 2015), <http://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=394143>.

¹²² Conversely, USCCB and other organizations have stated that “subjecting these families to expedited removal procedures, as intended by the Administration, could undercut their due process rights.” USCCB HJC Testimony, note 112, p. 10.

¹²³ S. 744, 113th. Cong. Sec. 3502 (providing counsel to unaccompanied children, the mentally disabled, and the particularly vulnerable), <http://www.lawandsoftware.com/bseoima/bseoima-senate-3502.html>. The Vulnerable Immigrants Voice Act, introduced by Rep. Hakeem Jeffries (D-NY) and others in the 113th and 114th Congresses, would provide counsel to unaccompanied children and the mentally disabled. <https://www.congress.gov/bill/114th-congress/house-bill/1700/text>; Richard Simon, “Lawmakers seek legal aid for youths caught crossing Southwest border,” *Los Angeles Times*, June 23, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-immigrants-legal-aid-20140623-story.html>. Those bills would not provide counsel in DHS expedited removal processes, were Congress to change the law to allow DHS expedited removal or summary return of unaccompanied children.

Organizations have uniformly recommended counsel for unaccompanied children. See American Immigration Council, *Two Systems of Justice*, March 2013, http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf, p. 12 (“Counsel should be appointed in cases where an immigrant is unable to retain a lawyer, beginning with minors”). See also, e.g., USCCB HJC Testimony, note 112, p. 12; AILA HJC Statement, note 117, p. 6; NIJC HJC Statement, note 115, pp. 5-7; ABA HJC Statement, note 113, p. 3. Children fleeing abuse and violence are often particularly incapable of articulating a fear of return by themselves, let alone arguing legal claims. USCCB HJC Testimony, note 112, p. 11.

Organizations have also reported that counsel assists in ensuring children attend court proceedings. American Immigration Council, *Taking Attendance: New Data Finds Majority of Children Appear in Immigration Court (July 2014)* (92.5 percent of children represented in immigration proceedings appear), http://immigrationpolicy.org/sites/default/files/docs/taking_attendance_new_data_finds_majority_of_children_appear_in_immigration_court_final_1.pdf; Safe Passage Project, Statement to the House Judiciary Committee, June 25, 2014, (“Out of the approximately three hundred children screened by Safe Passage, only two young people failed to appear for immigration court hearings after we were able to match them with pro bono counsel.”), <http://www.safeassageproject.org/safe-passage-testimony-to-congress-on-child-migrants/>, p. 2.

Organizations have also called the “justice AmeriCorps” program of pro bono lawyers it a “step in the right direction,” but “not adequate to meet overwhelming need.” See, e.g., NIJC HJC Statement, note 115, p. 6 (“given its modest size, geographic application to only 29 cities, limitation to children under the age of 16, and the time it will take to get the program operational, the overwhelming need for legal services for unaccompanied immigrant children remains.”)

¹²⁴ Organizations also have recommended increasing Legal Orientation Program funding to provide know-your-rights presentations to all detainees nationwide. Lutheran Immigration and Refugee Service (LIRS) and Women’s Refugee Commission (WRC), *Locking Up Family Values Again*, October 2014, http://lirs.org/wp-content/uploads/2014/11/LIRSWRC_LockingUpFamilyValuesAgain_Report_141114.pdf, p. 17; Human Rights First, *How to Manage the Increase in Families at the Border*, June 2014, <http://www.humanrightsfirst.org/sites/default/files/Families-at-the-Border.pdf>. S. 744 would have

provided such an increase. S. 744, 113th Cong., Sec. 3503, <http://www.lawandsoftware.com/bseoima/bseoima-senate-3503.html>.

¹²⁵ Bipartisan support has emerged for providing additional resources to backlogged immigration courts, even before the recent children's crisis. See American Immigration Council, *Empty Benches: Underfunding of Immigration Courts Undermines Justice*, May 2015, <http://immigrationpolicy.org/just-facts/empty-benches-underfunding-immigration-courts-undermines-justice>, p. 1 & n. 10. Recently, the House of Representatives passed appropriations legislation that would provide the largest increase in immigration judges in history—\$74 million for 55 new immigration judge teams. H.R. 2578, 114th Cong., <https://www.congress.gov/bill/114th-congress/house-bill/2578/text>; Mark Noferi, “Bi-Partisan House Bill Recommends Largest Increase Ever in Immigration Judges,” *Immigration Impact*, May 21, 2015, <http://immigrationimpact.com/2015/05/21/bi-partisan-house-bill-recommends-largest-increase-ever-in-immigration-judges/#sthash.4lkzFDxk.dpuf>. S. 744 would have added 75 immigration judges in each of the 2014-2016 fiscal years, nearly doubling immigration court capacity. S. 744, 113th Cong., Sec. 3501(a). S. 744 did not include extra funding for USCIS asylum officers.

¹²⁶ Human Rights First, *How to Manage the Increase*, June 2014, note 124, p. 2.

¹²⁷ USSCB HJC Testimony, note 112, p. 10-11 (recommending an increase in post-release funding for caseworkers, community-based reception services, and health care and medical care services); LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22. USSCB also recommended improving background checks for sponsors, as well as increased funding to the Legal Orientation Program for Custodians (LOPC), to inform sponsors of their responsibilities. USSCB HJC Testimony, note 112, p. 11.

¹²⁸ UNHCR *Detention Guidelines*, note 57, “Guideline 9.2, Children,” ¶¶ 51-57, 2012; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 2-3.

¹²⁹ USSCB HJC Testimony, note 112, p. 11.

¹³⁰ More broadly, organizations have recommended appropriate HHS facilities for children—smaller, community-based facilities with services, rather than larger, detention-like facilities. Women's Refugee Commission, *Halfway Home*, 2009, note 43, p. 37-38; USSCB HJC Testimony, note 112, p. 13.

¹³¹ UNHCR *Detention Guidelines*, ¶ 52; LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 7-8.

¹³² Senator Richard Blumenthal, “Stop locking up child refugees,” *The Hill*, Feb. 25, 2015, <http://thehill.com/opinion/op-ed/233659-stop-locking-up-child-refugees>.

¹³³ In particular, groups have criticized conditions in CBP's short-term detention facilities. ABA HJC Statement, note 113, p. 2; AILA HJC Statement, note 117, p. 5; WRC, *Halfway Home*, note 43, p. 5-12. On June 11, 2014, a group of civil, immigrant, and human rights organizations filed an administrative complaint on behalf of 116 children who had reported abuse and mistreatment while in CBP custody, such as shacking, inhumane conditions, inadequate access to medical care, and verbal, sexual, and physical abuse. ACLU, *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention*, June 11, 2014, <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>. Additionally, the American Immigration Council released a report detailing the lack of accountability for complaints filed against CBP officials by individuals in custody. American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*, May 4, 2014 (of 809 complaints of alleged abuse, 97 percent resulted in “no

action taken”), <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

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

¹³⁴ S. 744, 113th Cong., Sec. 3715 (establishing “secure alternatives programs that incorporate case management services,” with “nongovernmental community based organizations”); United States Conference of Catholic Bishops and Center for Migration Studies, *Unlocking Human Dignity: A Plan to Transform the U.S. Immigrant Detention System* (Washington, DC: May 2015), <http://www.usccb.org/about/migration-and-refugee-services/upload/unlocking-human-dignity.pdf>, p. 28; Human Rights First, *How to Manage the Increase*, June 2014, note 124.

¹³⁵ ICE requested \$122 million for alternatives to detention in fiscal year 2016—an increase of \$28 million over the President's budget for FY 2015, to increase the daily population in ATD from 27,219 participants at the end of FY 2014 to 53,000 participants. U.S. DHS, “U.S. Immigration and Customs Enforcement Salaries and Expenses,” 45, 64-67, February 2015, http://www.dhs.gov/sites/default/files/publications/DHS_FY2016_Congressional_Budget_Justification_15_0325.pdf.

¹³⁶ LIRS and WRC, *Locking Up Family Values Again* 2014, note 124, p. 21-22; Council on Foreign Relations, *Independent Task Force Report* No. 63, pp. 106-107.

¹³⁷ USSCB HJC Testimony, note 112, p. 13-15.

¹³⁸ Joseph R. Biden Jr., “Joe Biden: A Plan for Central America,” *N. Y. Times*, Jan. 29, 2015, <http://www.nytimes.com/2015/01/30/opinion/joe-biden-a-plan-for-central-america.html>; The White House, Office of the Vice President, “FACT SHEET: Promoting Prosperity, Security and Good Governance in Central America,” Jan. 29, 2015, <http://www.whitehouse.gov/the-press-office/2015/01/29/fact-sheet-promoting-prosperity-security-and-good-governance-central-ame>. Some have criticized the White House aid request as overly focused on security. Alexander Main, “Will Biden's Billion Dollar Plan Help Central America?” *North American Congress on Latin America*, Feb. 27, 2015, <https://nacla.org/news/2015/02/27/will-biden%27s-billion-dollar-plan-help-central-america>.