



## **Fact Sheet: Unaccompanied Migrant Children (UACs)**

### ***Who are unaccompanied alien children (UACs)?***

An unaccompanied alien child (UAC) is a minor – under the age of 18 -- who has arrived in the U.S. or at the border without a parent or guardian and without legal status. Children may also be designated as UACs if the government pursues criminal charges against their parents or legal guardians. Unaccompanied children are among the most vulnerable individuals attempting to navigate the U.S. immigration system. They face particular challenges and are offered additional legal protections.

### ***Why do UACs come to the U.S.?***

Most unaccompanied children arriving at the U.S. border are coming from the Northern Triangle region of Central America, which includes Guatemala, Honduras and El Salvador. There is no single reason which drives unaccompanied children to flee to the U.S., but rather a number of interacting factors. According to a Congressional Review Service (CRS) [report](#), major factors driving UAC flight are high rates of violent crime, gang violence and recruitment, and severe economic insecurity. A United Nations [survey](#) of 404 UACs in the U.S. found that the majority were fleeing persecution, violence or abuse and indicated a need for international protection.

Other reasons some UACs may come to the U.S. include “pull factors,” such as economic opportunity or the desire to reunite with family members who are already here. There is little evidence to suggest that child-focused U.S. immigration policies play a significant role in incentivizing UACs to leave their home countries and make the dangerous journey to the U.S.

Most UACs do not arrive at the border because they are runaways or because their parents have abandoned them. Instead, most often, parents have made the desperate determination that it is safer for their children to attempt to flee alone to the border than to remain at risk of persecution or violence. In some cases, these children have been entrusted to smugglers to take them to the U.S.; in others, parents may be waiting in Mexico and have sent their children across the border alone.

### ***What particular challenges do UACs face?***

Children attempting to seek protection alone in the U.S. face a number of specific challenges, beginning with the perilous journey to reach the border in the first place. With no family members to support and protect them and given the often-hurried circumstances of their flight, UACs face an extremely high risk of exploitation and abuse by human traffickers. The Congressional Research Service estimates that [75%-80%](#) of unaccompanied children arriving at the U.S.-Mexico border are victims of human trafficking. UACs who are apprehended by border officials are likely to be experiencing trauma and consequent mental health concerns as a result of these experiences. Deporting UACs presents an increased risk of returning them to contexts of trafficking, abuse and exploitation.

UACs also face a number of challenges after arriving in the U.S. and attempting to navigate the complicated U.S. immigration and asylum system. In the U.S., asylum seekers, including unaccompanied children, are not guaranteed access to legal counsel. UACs are therefore often [expected to represent themselves](#) before immigration judges, despite being unable to comprehend the complex proceedings which may result in their return to violence or persecution. The majority of those children forced to represent themselves [are unsuccessful](#) and are soon scheduled for deportation. The minority of UACs who do manage to find lawyers, however, win their cases about 88% of the time.

### ***What legal protections are provided to UACs?***

UACs are provided special protections under U.S. immigration and anti-trafficking law and are subject to separate removal and asylum processes. Migrant children who were the victims of trafficking or certain other crimes or who were abandoned or neglected by their parents are also offered special forms of status, including [T visa status](#) and [Special Immigrant Juvenile Status](#). The two principal legal bases providing protections to UACs are the 1997 [Flores Settlement Agreement](#) and the 2008 [William Wilberforce Trafficking Victims Protection Reauthorization Act](#) (TVPRA).

#### **Flores Settlement Agreement:**

The Flores Settlement Agreement is a 1997 agreement between the U.S. government and immigration advocacy groups which arose out of a 1987 class action lawsuit, *Flores v. Reno*. The agreement sets standards for the detention, release, and treatment of migrant children in government custody. It is currently overseen by Judge Dolly Gee of California.

The Flores agreement guarantees a number of rights to detained migrant children, including the right to be held in the least restrictive setting appropriate while in detention and the right to be released from government custody without delay to parents, family members, or appropriate guardians.

According to [a 2016 federal court decision](#), the Flores agreement applies both to children accompanying their parents, as well as to unaccompanied children. Accordingly, children cannot be detained with parents in facilities made for adults and unequipped to properly care for children. And, even in family detention facilities specifically designed to detain parents and children together, federal courts have interpreted the Flores agreement to require that children be detained [no more than 20 days](#).

The Flores agreement also includes more specific standards for the treatment of detained migrant children, [guaranteeing](#) the provision of food and drinking water, medical assistance including immunizations, adequate temperature control and ventilation, and an individualized needs assessment of each child.

#### **Trafficking Victims Protection Reauthorization Act**

The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) is a bipartisan bill signed into law by President George W. Bush which recognizes that unaccompanied children may be victims of human trafficking and includes a number of protective provisions for UACs. The original version of the bill was signed into law in 2003 and was reauthorized in 2005 and 2008.

Under the TVPRA, UACs apprehended by Customs and Border Protection (CBP) or Immigration and Customs Enforcement (ICE) must first be screened to determine their country of origin. UACs who are from “noncontiguous countries” – countries other than Mexico or Canada – or whose country of origin is unknown must be transferred to the care and custody of the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS) within 72 hours of their apprehension. ORR shelters are staffed by trained childcare providers, and once transferred to ORR children must be further screened to determine whether they have been victims of human trafficking or have a credible fear of persecution or torture if returned to their home country.

### UAC Processing Timelines



72 Hours

Time UACs may be held in CBP custody before being moved to an ORR facility.



152 Days

Average length of time in ORR facilities before children are released to a suitable sponsor.



2.2 Years

Average wait in the immigration court backlog for a hearing on an immigration-related case.

Sources: [HHS October 2020 UAC Factsheet](#), [TRAC Immigration Court Backlog Tool](#)

When a family member or other suitable sponsor in the United States is available to take custody and provide care, HHS must release UACs to their custody while immigration court proceedings continue. HHS is required to ensure that all actions and decisions related to care and custody of UACs are in the child’s best interest. HHS does not provide legal counsel, but it is required to provide opportunities, when possible, for UACs to access pro bono assistance with their cases.

In cases where UACs are determined to be from Mexico or Canada, they may be repatriated to such countries in such a way that protects the children from trafficking, exploitation and violence. Children from Mexico or Canada must be returned to child welfare officials during reasonable business hours and under established bilateral agreements.

***Why are UACs from Mexico and Canada treated differently from other migrant children?***

UACs from Mexico and Canada also face particular challenges, as they are treated differently from other unaccompanied children under the TVPRA. Unlike all other children who are referred to ORR shelters, Mexican and Canadian UACs are generally rapidly repatriated within [48 hours](#) of apprehension after a cursory screening by CBP officers to determine whether they have been a victim of trafficking, whether they have a possible asylum claim, and whether they are capable of independently choosing to be returned.

The TVPRA stipulates that the U.S. must engage in agreements with Mexican and Canadian governments to properly facilitate these expedited “voluntary returns” and prevent UACs from being returned to contexts of violence or trafficking. Still, [advocacy groups](#) and [academics](#) have criticized the differential treatment of children from “contiguous” and “non-contiguous” countries, arguing there is no clear reason for the distinction, and that CBP officers are ill-equipped to properly screen migrant children and all UACs should be treated and cared for by child welfare professionals.

### ***What Trump Administration Actions Have Affected UACs?***

The Trump administration has taken a number of actions impacting UACs at the border. These include:

- In April 2018, the administration [announced](#) a “zero-tolerance” policy at the border, under which all adults who crossed the border without authorization – even those in families who intended to seek asylum – were prosecuted. This led to the separation of parents and children, and the designation of [approximately](#) 4,400 children who had entered the U.S. with their parents as UACs. The exact number of those separated remains unclear, as the administration [failed](#) to properly record the number of children who were separated or the whereabouts of their parents. According to a [court filing](#) on October 20, 2020, the government has not united, and in many cases has not located, the parents of at least 545 children after it separated them as part of a 2017 pilot program that preceded the public implementation of the zero-tolerance policy.

For more on family separation and the zero-tolerance policy, see [Fact Sheet: Family Separation at the U.S.-Mexico Border](#).

- In May 2018, the administration began a [policy of information sharing](#) between ORR, Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP). Under the policy, ORR provides ICE with information related to the immigration status of family members and potential sponsors of UACs, including persons living with the sponsors. The policy has [resulted](#) in fewer potential sponsors coming forward out of fear that their information will be sent to CBP or ICE, leaving many children to [wait for months](#) in ORR facilities until a family member or suitable sponsor is found.

In Congress’s [appropriations bill](#) for fiscal year (FY) 2019, language was included that restricted ICE from using information from DHS to initiate enforcement actions against sponsors or family members of UACs. The same language was not included in the appropriations bill for FY 2020.

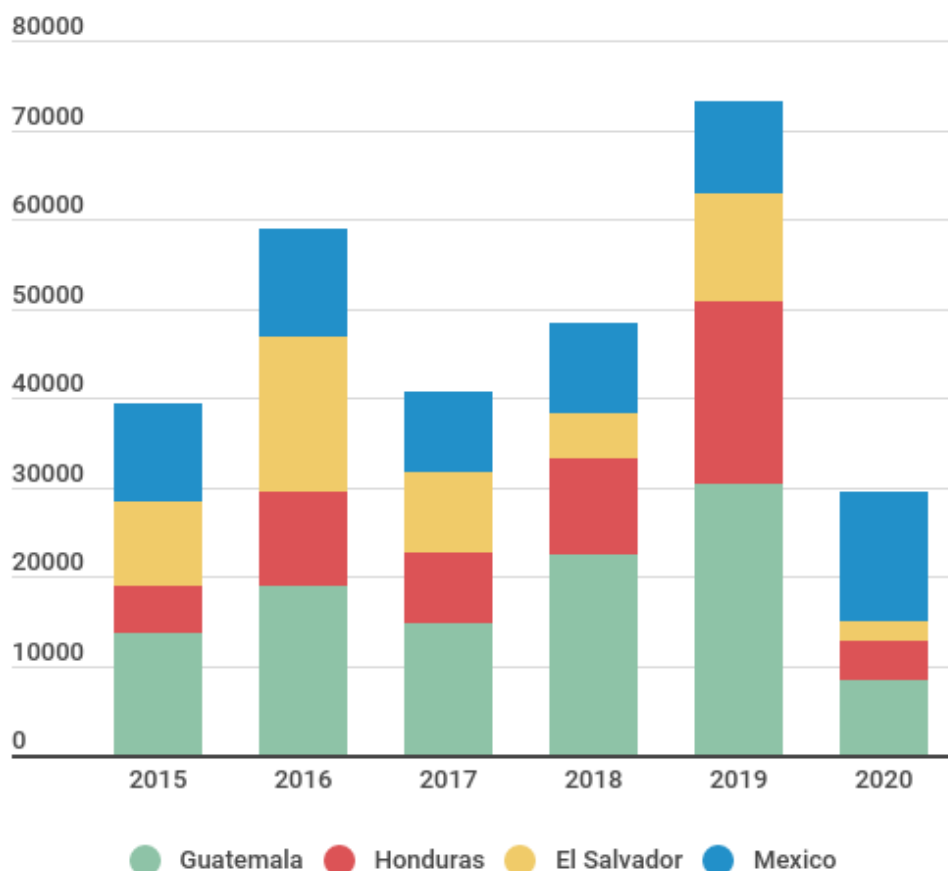
- In June 2018, President Trump issued an [executive order](#) ending the practice of separating families as a result of the zero-tolerance policy and moving to detain families together while their immigration cases proceeded. The order also required the construction of additional facilities to properly house families and children in detention.

- In September 2018, the administration [proposed regulatory changes](#) which would terminate the Flores Settlement Agreement. The [regulations](#) would remove the 20-day deadline by which UACs must be released from custody, a central component of the Flores Agreement and a critical protection against the indefinite detention of migrant children. In September 2019, the new regulations were [struck down](#) in federal court by Judge Gee.
- In March 2020, the administration began barring all undocumented immigrants, including asylum seekers and UACs, from entering the U.S. in response to a Center for Disease Control and Prevention (CDC) [rule](#). The rule was put in place temporarily in response to the COVID-19 pandemic but has since been [extended indefinitely](#). As of September 2020, more than [8,500](#) UACs have been summarily expelled under the rule without being sent to ORR facilities or being appropriately screened for persecution or human trafficking. Children have [continued to be expelled](#) under the CDC rule even after testing negative for the coronavirus.
- In July 2020, it was [revealed](#) that ICE had been detaining UACs in private hotels, withholding access from legal representatives and family members before secretly expelling them to their home countries or Mexico under the CDC rule. ICE [used](#) “transportation specialist” contractors to carry out these hotel detentions, and it continued the practice despite thousands of open beds in ORR facilities with personnel trained to care for children. According to [court reports](#), at least 577 UACs were detained in hotels between March and July 2020. In September 2020, Judge Gee [ordered](#) ICE to end the practice of hotel detentions.

### ***How many UACs come to the U.S.?***

Between Fiscal Year (FY) 2015 and FY 2018, an average of 44,294 unaccompanied children were apprehended by CBP on the U.S.-Mexico border annually. That number [spiked](#) to 72,855 in FY 2019. While these numbers have [declined](#) in FY 2020 in the wake of the COVID-19 pandemic and increasing asylum restrictions, thousands of unaccompanied children continue to arrive at the border seeking protection. As of September 11, 2020, more than 8,800 have been summarily expelled under the CDC rule implemented in March, 2020. As of August 31, 2020, [849 children](#) were in ORR custody.

### **UACs Apprehended by U.S. Border Patrol (FY 2015- FY 2020)**



Source: [U.S. Border Patrol Southwest Border Apprehensions](#)

According to [records](#) from ORR facilities in FY 2019, approximately 30% of UACs arriving at the border are girls and 70% are boys. UACs predominantly arrive between the ages of 13 and 17 (86%), although the population also includes “tender age” children between 6 and 12 (14%).

According to unpublished data [provided](#) to the Congressional Review Service by HHS, in FY 2019, 76% of UACs were released by ORR to family members while removal proceedings continue, of which half were released to parents or legal guardians and half were released to a close relative. A further 9% of UACs were released by ORR to more distant relatives or sponsors deemed suitable by the agency. Finally, 14% of UACs either reached 18 and “aged out” of ORR care, accepted voluntary departure, or entered long term foster care.

According to an [analysis](#) of 60,000 UAC immigration court cases between 2005 and 2014, 51% of UAC cases resulted in a removal order, 20% of cases ended in voluntary departure, and 29% ended in a positive decision in which the child was allowed to stay in the country. As discussed above, UACs who manage to obtain legal representation are far more likely to receive positive immigration court decisions and remain in the U.S.