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Unaccompanied Alien Children: An Overview

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September 8, 2014

Congressional Research Service

7-5700

www.crs.gov

R43599

Summary

The number of unaccompanied alien children (UAC) arriving in the United States has reached alarming numbers, straining the system put in place over the past decade to handle such cases. UAC are defined in statute as children who lack lawful immigration status in the United States, who are under the age of 18, and who are without a parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. Two statutes and a legal settlement most directly affect U.S. policy for the treatment and administrative processing of UAC: the Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457); the Homeland Security Act of 2002 (P.L. 107-296); and the *Flores Settlement Agreement* of 1997.

Several agencies in the Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) share responsibilities for the processing, treatment, and placement of UAC. DHS Customs and Border Protection apprehends and detains UAC arrested at the border while Immigration and Customs Enforcement (ICE) handles the transfer and repatriation responsibilities. ICE also apprehends UAC in the interior of the country and is responsible for representing the government in removal proceedings. HHS is responsible for coordinating and implementing the care and placement of UAC in appropriate custody.

Four countries account for almost all of the UAC cases (El Salvador, Guatemala, Honduras, and Mexico) and much of the recent increase has come from El Salvador, Guatemala, and Honduras. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the three Central American countries accounted for 17%. By the first eight months of FY2014, the proportions had almost reversed, with Mexican UAC comprising only 25% of the 47,017 UAC apprehensions, and UAC from the three Central American countries comprising 73%. As of August 31, 2014, UAC from the three Central American countries comprised 76% of the 66,127 UAC apprehensions that had occurred by that date.

In an effort to address the crisis, the Administration developed a working group to coordinate the efforts of the various agencies involved. It also opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border. In June, the Administration announced plans to provide funding to the affected Central American countries for a variety of programs and security-related initiatives; and in July, the Administration requested \$3.7 billion in supplemental appropriations for FY2014 to address the crisis. Relatedly, Congress is considering funding increases for HHS and DHS in each agency's FY2015 appropriations bill. Additionally, Senator Mikulski and Representative Rogers introduced supplemental appropriations bills for FY2014 (S. 2648 and H.R. 5230) for departments and agencies involved in the UAC crisis (e.g., DHS, HHS, the Departments of Justice and State). The House passed its supplemental appropriations bill on August 1, 2014. In addition to the various appropriations bills that are being considered, several pieces of legislation have been introduced in both chambers; however, this report does not discuss those bills.

CRS has published additional reports on this topic. For a depiction of how UAC are processed, see CRS IN10107, *Unaccompanied Alien Children: A Processing Flow Chart*, by Lisa Seghetti. For a discussion of select factors that might contribute to UAC migrating to the United States, see CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, coordinated by William A. Kandel. For a report on answers to frequently asked

questions, see CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*, by Kate M. Manuel and Michael John Garcia. For information on country conditions, security conditions, and U.S. policy in Central America, see CRS Report R43702, *Unaccompanied Children from Central America: Foreign Policy Considerations*, coordinated by Peter J. Meyer.

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Background

There has been a large increase in the number of unaccompanied alien children (UAC) apprehended along the Southwest border, which has placed a strain on several agencies and their resources. During a recent hearing on the topic, Members of Congress, like the Administration, characterized the issue as a humanitarian crisis.¹ Overwhelmingly, the children are coming from three Central American countries² and Mexico. They are reportedly coming for economic opportunities, to escape violence in their home countries, and to be reunited with parents or other family members who are living in the United States.³ Critics of the Obama Administration, however, assert that the recent surge in UAC fleeing their home countries is due to a perception of relaxed U.S. immigration policy toward children.⁴ They also cite a 2008 law⁵ that treats UAC from contiguous countries differently than UAC from non-contiguous countries (see “Customs and Border Protection”).

Unaccompanied alien⁶ children are defined in statute as children who lack lawful immigration status in the United States,⁷ are under the age of 18, and are without a parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody.⁸ They most often arrive at United States ports of entry or are apprehended along the southwestern border with Mexico. Less frequently, they are apprehended in the interior of the country and determined to be juveniles⁹ and unaccompanied.¹⁰ Although most of these children are age 14 or older, recently there has been an increase in the apprehension of UAC under the age of 13.¹¹

¹ Senate Judiciary Committee hearing on *Oversight of the Department of Homeland Security*, June 11, 2014. Hereinafter referred to as *Senate oversight hearing*.

² Guatemala, Honduras, and El Salvador.

³ Cecilia Muñoz, the White House Director of Domestic Policy Council, “Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children,” press release, June 3, 2014.

⁴ Most commonly these critics cite the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), passed by the Senate in 2013, which would allow certain unlawfully present aliens to adjust to a lawful immigration status; and the administrative policy entitled Deferred Action for Childhood Arrivals (DACA), which grants certain aliens who arrived in the United States prior to a certain period as children some protection from removal for at least two years. For an example of these arguments, see U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 113th Cong., 2nd sess., June 11, 2014. For a discussion of S. 744, see CRS Report R43099, *Comprehensive Immigration Reform in the 113th Congress: Short Summary of Senate-Passed S. 744*, by Ruth Ellen Wasem. For a discussion of DACA, see CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, by Andorra Bruno.

⁵ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).

⁶ *Alien*, a technical term appearing throughout the Immigration and Nationality Act (INA), refers to a foreign national who is not a citizen or national of the United States.

⁷ The child may have illegally entered the country or been legally admitted but overstayed length of admittance (i.e., a visa overstay.)

⁸ 6 U.S.C. §279(g)(2).

⁹ A juvenile is defined as an alien under the age of 18. 8 CFR §236.3. In this report, the terms “juvenile,” “child,” and “minor” are used interchangeably.

¹⁰ A juvenile is classified as *unaccompanied* if neither a parent nor a legal guardian is with the juvenile alien at the time of apprehension, or within a geographical proximity to quickly provide care for the juvenile. 8 CFR §236.3(b)(1).

¹¹ White House, Departments of Homeland Security and Health and Human Services, “Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children,” press release, June 3, 2014.

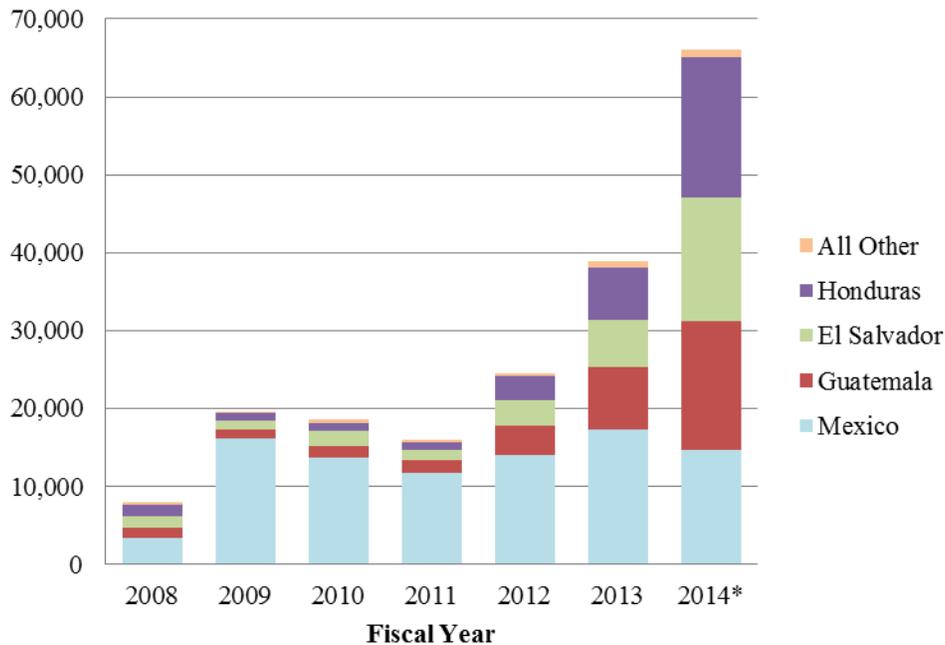
This report opens with an analysis of the data of the recent surge in UAC crossing the border. It then discusses current policy on the treatment, care, and custody of the population. The processing and treatment of UAC is detailed, with a discussion of each agency that is involved with the population. The report then discusses both Administrative and congressional action to deal with the current crisis. As this issue is still emerging, the report concludes with a series of questions related to UAC that remain unanswered.

Scope of the Problem

Overall, the number of UAC apprehended by the Border Patrol has increased significantly over the past five years, and most of the increase has come from three countries: El Salvador, Guatemala, and Honduras.¹² As of the end of June, the Border Patrol had apprehended more UAC than in any of the previous five years, and apprehended almost three times as many UAC as in FY2012.

According to the Administration, in FY2014 there has been an increase in the number of UAC who are girls and the number of UAC who are under the age of 13. This change is both the result of an increase in the proportion of girls and in children under 13 in the UAC population and because the number of all UAC has increased.

Figure I. UAC Apprehensions by Country of Origin, FY2008-FY2014



Source: For FY2008-FY2013: U.S. Department of Homeland Security, United States Border Patrol, *Juvenile and Adult Apprehensions—Fiscal Year 2013*. For FY2014, Customs and Border Protection, *Southwest Border Unaccompanied Alien Children*, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>.

¹² Over the past three years, there has been an increase in Border Patrol apprehensions of third-country nationals. While the number of those apprehended from Mexico decreased slightly (from 286,154 to 267,734), the number of apprehended third-country nationals increased almost three-fold from 54,098 to 153,055.

Notes: FY2014 figures are October 1, 2013 to August 31, 2014, representing eleven-twelfths of a fiscal year. Also, FY2014 numbers are only for the Southwest border. Of the 38,833 UAC who were apprehended in FY2013, almost all (38,759) were apprehended at the Southwest border.

Nationals of Guatemala, Honduras, El Salvador, and Mexico account for almost all unaccompanied alien children apprehended at the Mexico-U.S. border, as **Figure 1** shows. Flows of UAC from Mexico rose substantially in FY2009 and have remained rather steady. UAC from Guatemala, Honduras, and El Salvador account for the surge beginning in FY2012. In FY2009, Mexican UAC accounted for 82% of 19,668 UAC apprehensions, while the three Central American countries accounted for 17%. By August 31, 2014, looking at apprehensions along the Southwest border, the proportions had almost reversed, with Mexican UAC comprising only 22% of the 66,127 UAC apprehensions, and UAC from the three Central American countries comprising 76%.

Current Policy¹³

Two laws and a settlement, discussed below, most directly affect U.S. policy for the treatment and administrative processing of UAC: the Flores Settlement Agreement of 1997; the Homeland Security Act of 2002; and the Trafficking Victims Protection Reauthorization Act of 2008.

During the 1980s, allegations of UAC mistreatment by the former Immigration and Naturalization Service (INS)¹⁴ caused a series of lawsuits against the government that eventually resulted in the *Flores Settlement Agreement (Flores Agreement)* in 1997.¹⁵ The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC while detained without a parent or legal guardian present.¹⁶ It required that immigration officials detaining minors provide (1) food and drinking water; (2) medical assistance in emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; and (6) separation from unrelated adults whenever possible. For several years following the *Flores Agreement*, criticism continued over whether the INS had fully implemented the regulations that had been drafted.¹⁷

Five years later, the Homeland Security Act of 2002 (HSA; P.L. 107-296) divided responsibilities for the processing and treatment of UAC between the newly created Department of Homeland Security (DHS) and the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR). The HSA assigned apprehension, transfer, and repatriation responsibilities to DHS. The law assigned responsibility to HHS for coordinating and implementing the care and placement of UAC in appropriate custody; reunifying UAC with their parents abroad if appropriate; maintaining and publishing a list of legal services available to UAC; and collecting statistical information on UAC, among other things.¹⁸ The HSA also established a statutory

¹³ William Kandel, Analyst in Immigration Policy, contributed to this section.

¹⁴ The Homeland Security Act of 2002 abolished the Immigration and Naturalization Service (INS) and its functions were split in the Departments of Homeland Security, Justice, and Health and Human Services.

¹⁵ *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997).

¹⁶ See DHS Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

¹⁷ See U.S. Department of Justice, Office of the Inspector General, *Unaccompanied Juveniles in INS Custody*, Executive Summary, Report no. I-2001-009, September 28, 2001.

¹⁸ ORR assumed care of UAC on March 1, 2003, and created the Division of Unaccompanied Children's Services (continued...)

definition of UAC as unauthorized minors without the accompaniment of a parent or legal guardian. Despite these developments, criticism that the *Flores Agreement* had not been fully implemented continued.

In response to ongoing concerns that UAC who were apprehended by the Border Patrol were not being adequately screened to see if there was a reason that they should not be returned to their home country, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457). The TVPRA directed the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that UAC in the United States are safely repatriated to their country of nationality or of last habitual residence. The section set forth special rules for UAC from contiguous countries (i.e., Mexico and Canada), allowing such children, under certain circumstances, to return to Mexico or Canada without additional penalties, and directing the Secretary of State to negotiate agreements with Mexico and Canada to manage the repatriation process. Unaccompanied alien children from countries other than Mexico or Canada—along with UAC from those countries who are apprehended away from the border—are to be transferred to the care and custody of HHS and placed in formal removal proceedings. The TVPRA requires that children from contiguous countries be screened within 48 hours of being apprehended to determine whether they should be returned to their country or transferred to HHS and placed in removal proceedings.

Processing and Treatment of Apprehended UAC¹⁹

Several DHS agencies are involved in apprehending, processing, and repatriating UAC, while HHS is responsible for the care and custody of UAC. The Executive Office for Immigration Review (EOIR) in the U.S. Department of Justice conducts the immigration removal proceedings.

Customs and Border Protection (CBP) apprehends, processes, and detains the majority of UAC arrested along U.S. borders. Immigration and Customs Enforcement (ICE) physically transports UAC from CBP to HHS Office of Refugee Resettlement (HHS-ORR) custody. HHS-ORR is responsible for detaining and sheltering UAC who are from non-contiguous countries and those from contiguous countries (i.e., Canada and Mexico) for whom there is a concern that they may be victims of trafficking or have an asylum claim, while they await an immigration hearing. U.S. Citizenship and Immigration Services is responsible for the initial adjudication of asylum applications filed by UAC. The Executive Office for Immigration Review conducts the immigration proceedings that determine whether the UAC is allowed to remain in the United States or is deported to his/her home country. If a UAC is ordered removed from the United States, ICE is responsible for returning the alien to his/her home country. The following sections discuss the role of these federal agencies in apprehending, processing, detaining, and repatriating UAC.

(...continued)

(DUCS) for addressing the requirements of this population. P.L. 107-296, Section 462.

¹⁹ To see a flow chart of how UAC are processed, see CRS Report IN10107, *Unaccompanied Alien Children: A Processing Flow Chart*, by Lisa Seghetti.

Customs and Border Protection

The Office of Border Patrol (OBP)²⁰ and the Office of Field Operations (OFO)²¹ are responsible for apprehending and processing UAC that come through a port of entry (POE) or are found at or near the border.²² UAC that are apprehended between POEs are transported to Border Patrol stations, and if they are apprehended at POEs, they are escorted to CBP secondary screening areas. In both cases, when CBP confirms that juveniles have entered the country illegally and unaccompanied, they are considered UAC and processed for immigration violations, and the appropriate consulate is notified that the juvenile is being detained by DHS.

The Border Patrol apprehends the majority of UAC at or near the border. They also process UAC.²³ With the exception of Mexican and Canadian UAC who meet a set of criteria discussed below, the Border Patrol has to turn UAC over to ICE for transport to HHS-ORR within 72 hours.²⁴ Until 2008, the Border Patrol, as a matter of practice, returned Mexican UAC to Mexico. Under this practice, Mexican UAC were removed through the nearest POE and turned over to a Mexican official within 24 hours and during daylight.

As mentioned, the TVPRA required the Secretary of Homeland Security, in conjunction with the Secretary of State, the Attorney General, and the Secretary of Health and Human Services, to develop policies and procedures to ensure that UAC are safely repatriated to their country of nationality or last habitual residence. Of particular significance, the TVPRA required CBP to follow certain criteria for UAC who are nationals or habitual residents from a contiguous country (i.e., Canada and Mexico). In these cases, CBP personnel must screen the UAC within 48 hours to determine the following:

- the UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the minor is at risk should the minor be returned to his/her country of nationality or last habitual residence;
- the UAC does not have a possible claim to asylum; and
- the UAC is able to make an independent decision to voluntarily return to his/her country of nationality or last habitual residence.²⁵

If, after assessing the UAC, CBP personnel determine the minor to be inadmissible under the Immigration and Nationality Act,²⁶ they can permit the minor to withdraw his/her application for

²⁰ OBP includes the Border Patrol. OBP and the Border Patrol are used interchangeably throughout this section.

²¹ The OFO oversees the CBP Officers who provide inspections of travelers and goods that come through a port of entry.

²² When both OBP and OFO are referenced in this section, “CBP” is used.

²³ The processing of UAC includes gathering biographic information such as their name and age as well as their citizenship and whether they are unaccompanied. Border Patrol agents also collect biometrics on UAC and query relevant immigration, terrorist, and criminal databases.

²⁴ The 72-hour time period was established in statute by the TVPRA.

²⁵ P.L. 110-457, §235(a)(2)(A).

²⁶ 8 U.S.C. §1101 et seq. Although the screening provision only applies to UAC from contiguous countries, in March 2009 DHS issued a policy that, in essence, made the screening provisions applicable to all UAC. U.S. Congress, Senate Committee on the Judiciary, “Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking,” testimony of Acting Deputy Assistant Secretary Kelly Ryan, September 13, 2011.

admission²⁷ and the minor can voluntarily return to his/her country of nationality or last habitual residence.

The TVPRA contains a number of specific safeguards for the treatment of UAC while in the care and custody of CBP and it also provides guidance for CBP personnel on returning a minor to his/her country of nationality or last habitual residence. It also requires the Secretary of State to negotiate agreements with the contiguous countries with respect to the repatriation of their UAC. The agreements would serve as a protection from trafficking and, at minimum, are required to include provisions pertaining to (1) the handoff of the minor children to an appropriate government official; (2) a prohibition against returning UAC outside of “reasonable business hours”; and (3) a requirement that the border personnel of the contiguous countries be trained in the terms of the agreements.

As mentioned, UAC apprehended by the Border Patrol are brought to a Border Patrol facility, where they are processed. In 2008, the agency issued a memorandum entitled “Hold Rooms and Short Term Custody.”²⁸ Since the issuance of this policy, non-governmental organizations (NGOs) have criticized the Border Patrol for failing to fully uphold the provisions in current law and the *Flores Agreement*.²⁹ Indeed, the DHS Office of Inspector General (OIG) issued a report in 2010 that concluded while CBP was in general compliance with the *Flores Agreement*, it needed to make improvements in certain areas with respect to its handling of UAC.

The 2010 OIG report, however, did not address whether CBP was in compliance with the TVPRA. As highlighted above, the TVPRA requires CBP personnel to screen UAC from contiguous countries for severe forms of trafficking in persons *and* for fear of persecution if they are returned to their country of nationality or last habitual residence. At least one NGO that conducted a two-year study on UAC³⁰ asserted in its report that CBP does not adequately do this nor do they have training in place for their Border Patrol agents.³¹

Immigration and Customs Enforcement (ICE)

ICE is responsible for the physical transfer of UAC from CBP to HHS-ORR. Additionally, ICE may apprehend UAC in the interior of the country during immigration enforcement actions. ICE is also responsible for representing the government in removal procedures before EOIR. Unaccompanied alien children who are not subject to TVPRA’s special repatriation procedures

²⁷ In this case, the UAC is permitted to return immediately to Mexico or Canada, and does not face administrative or other penalties. 8 U.S.C. §1225(a)(4).

²⁸ UAC are held in “hold rooms” at Border Patrol stations. The 2008 memorandum, which is publically available but redacted, outlines agency policy on the care and treatment of individuals in CBP care and custody. See U.S. Customs and Border Patrol, Memorandum on “Hold Rooms and Short Term Custody,” June 2, 2008, <http://foiarr.cbp.gov/streamingWord.asp?i=378>.

²⁹ See for example, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, by Betsy Cavendish and Maru Cortazar, Appleseed, Washington DC, 2011. Hereinafter referred to as *Children at the Border*.

³⁰ See *Children at the Border*.

³¹ Relatedly, the 2010 OIG study was unable to determine whether CBP personnel had sufficient training to comply with the provisions in the *Flores Agreement*. Notably, the Appleseed study (*Children at the Border*) included site visits to ten Border Patrol facilities as well as site visits to locales in Mexico and interviews with government officials in both countries and minors in custody and who have been repatriated. Whether this limited site visit sample is sufficiently varied to be adequately generalizable to all Border Patrol facilities on the U.S.-Mexico border is unclear.

for certain children from Mexico or Canada (i.e., voluntary departure) may be placed in standard removal proceedings pursuant to INA §240. The TVPRA specifies that UAC in standard removal proceedings also are eligible to be granted voluntary departure under INA §240B at no cost to the child. The TVPRA requires that HHS ensure, to the greatest extent possible, that UAC have access to legal counsel, and statute also permits HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children.

ICE is also responsible for the physical removal of all foreign nationals, including UAC, who have final orders of removal or who have elected voluntary departure while in removal proceedings. To safeguard the welfare of all UAC, ICE has established policies for repatriating UAC, including

- returning the UAC only during daylight hours;
- recording the transfer by making sure that the receiving government official or designee signs for custody;
- returning the UAC through a port designated for repatriation;
- providing the UAC the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.³²

ICE notifies the country of every foreign national being removed from the United States.³³ The ability to affect a removal order is dependent on the ability of the U.S. government to secure travel documents for the alien being removed from the country in question.³⁴ As a result, the United States is dependent on the willingness of foreign governments to accept the return of their nationals. Each country sets documentary requirements for repatriation of their nationals.³⁵ While some countries allow ICE to use a valid passport to remove an alien (if the alien is in possession of one), other countries require ICE to obtain a travel document specifically for the repatriation.³⁶ According to one report, the process of obtaining travel documents can become problematic because countries often change their documentary requirements or raise objections to the return of a juvenile.³⁷

Once the foreign country has issued travel documents, ICE arranges transport of the UAC and, if flying, accompanies the UAC on the flight to his/her home country. The majority of ICE's UAC

³² Email from ICE Congressional Relations, May 16, 2014.

³³ A country clearance is the process by which ICE notifies a foreign country, through the U.S. Embassy abroad, that a foreign national is being repatriated. Additionally, when an alien is being escorted by ICE personnel, the country clearance process is used to notify the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

³⁴ Conversation with Doug Henkel, Associate Director, ICE Removal and Management Division, February 20, 2012.

³⁵ Depending on the country and depending on where the UAC is housed, the consular officers will conduct in-person or phone interviews. Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

³⁶ Annex 9 of the Civil Aviation Convention requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

³⁷ Olga Byrne and Elise Miller, *The Flow of Unaccompanied Children Through the Immigration System*, Vera Institute of Justice, Washington, DC, March 2012, p. 27.

removals are conducted by commercial airlines. ICE provides two escort officers for each UAC.³⁸ Mexican UAC are repatriated in accordance with Local Repatriation Agreements (LRA), which require notification of the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).³⁹

Office of Refugee Resettlement⁴⁰

The Unaccompanied Alien Children Program in ORR/HHS provides for the custody and care of unaccompanied alien minors who have been apprehended by ICE or CBP or referred by other federal agencies. The TVPRA, which made significant reforms to policies on UAC, directed that HHS ensure that the UAC “be promptly placed in the least restrictive setting that is in the best interest of the child.”⁴¹ The HSA requires that ORR develop a plan to ensure the timely appointment of legal counsel for each UAC, ensure that the interests of the child are considered in decisions and actions relating to the care and custody of a UAC, and oversee the infrastructure and personnel of UAC residential facilities, among other responsibilities.⁴² ORR also screens the UAC to determine if the child has been a victim of a severe form of trafficking in persons, if there is credible evidence that the minor is at risk should the minor be returned to his/her country of nationality or last habitual residence, and if the UAC has a possible claim to asylum.

ORR arranges to house the child either in one of its shelters or in a foster care situation; or the UAC program reunites the child with a family member. The *Flores Agreement* outlines the following preference ranking for sponsor types: (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.⁴³ According to ORR, the majority of the youth are cared for through a network of state-licensed ORR-funded care providers that provide classroom education, mental and medical health services, case management, and socialization and recreation. The state-licensed ORR-funded care providers also facilitate the release of UAC to family members or other sponsors who are able to care for them.⁴⁴

In making these placement determinations, ORR conducts a background investigation to ensure the identity of the adult assuming legal guardianship for the UAC and that the adult does not have a record of abusive behavior. ORR may consult with the consulate of the UAC’s country of origin as well as interview the UAC to ensure he/she also agrees with the proposed placement. If such background checks reveal evidence of actual or potential abuse or trafficking, ORR may require a home study as an additional precaution.⁴⁵ In addition, the parent or guardian is required to

³⁸ An additional officer is added for each group that exceeds five UAC. The gender of the officers corresponds to the gender of the children being repatriated. Email from ICE Congressional Relations, May 16, 2014.

³⁹ Ibid.

⁴⁰ William Kandel, Analyst in Immigration Policy, contributed to this section.

⁴¹ §§235(a)-235(d) of TVPRA; 8 U.S.C. §1232(b)(2).

⁴² Section 235(c) of the TVPRA and Section 462(b) of the Homeland Security Act of 2002 (HSA, P.L. 107-296) describe conditions for the care and placement of UAC in federal custody.

⁴³ *Flores v. Reno Stipulated Settlement Agreement*, 1997, p.10.

⁴⁴ Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, Fact Sheet, May 2014, http://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf. (Hereinafter ORR UAC Fact Sheet, May 2014.)

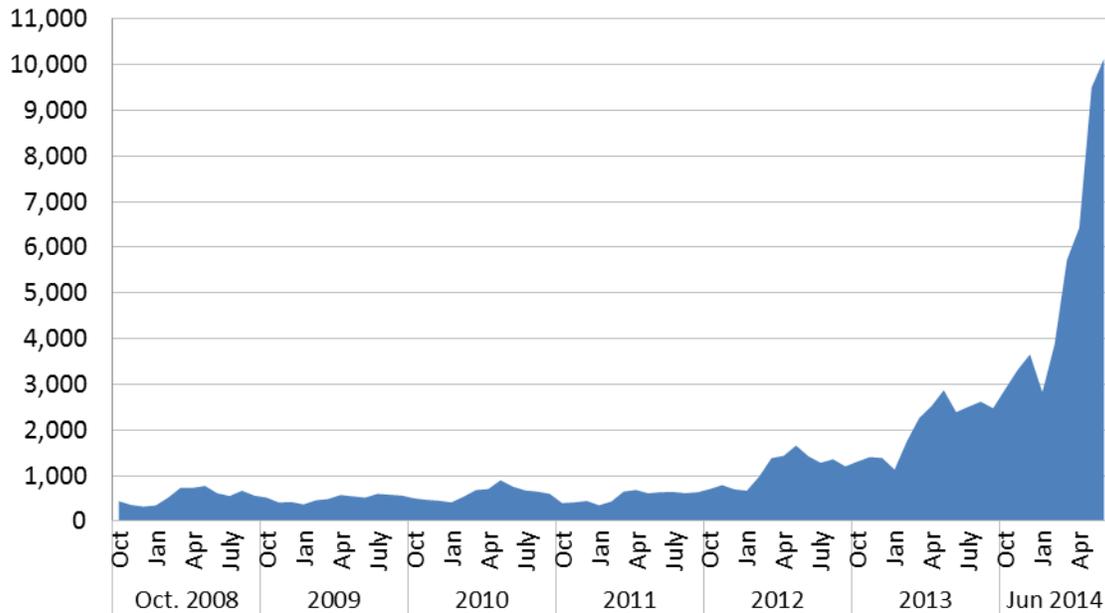
⁴⁵ Pursuant to the TVPRA of 2008, home studies are required for certain UAC considered especially vulnerable.

complete a Parent Reunification Packet to attest that they agree to take responsibility for the UAC and provide him/her with proper care.⁴⁶

A juvenile may be held in a secure facility only if he/she is charged with criminal or delinquent actions, threatens or commits violence, displays unacceptably disruptive conduct in a shelter, presents an escape risk, is in danger and is detained for his/her own safety, or is part of an emergency or influx of minors that results in insufficient bed space at non-secure facilities.⁴⁷

Of the children served, ORR reports that ultimately about 85% are reunified with their families.⁴⁸ Between FY2008 and FY2010, the length of stay in ORR care averaged 61 days, and total time in custody ranged from less than one day to 710 days.⁴⁹ In a May 2014 fact sheet, ORR reported: “The average length of stay in the program is currently near 35 days.”⁵⁰ It is important to note that removal proceedings continue even when UAC are placed with parents or other relatives.

Figure 2. UACs in ORR Custody, October 2008 through June 2014
Monthly Referrals



Source: CRS presentation of unpublished data from the Office of Refugee Resettlement.

Note: FY2014 referrals are through June 30, 2014.

⁴⁶ Office of Refugee Resettlement, Unaccompanied Children’s Services, *ORR/DCS Family Reunification Packet for Sponsors (English/Español)*, <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services#Family%20Reunification%20Packet%20for%20Sponsors>.

⁴⁷ Center for Human Rights & Constitutional Law, *Flores v. Meese: Final Text of Settlement Establishing Minimum Standards and Conditions for Housing and Release of Juveniles in INS Custody*, Exhibit 2 (1997).

⁴⁸ ORR UAC Fact Sheet, May 2014.

⁴⁹ Vera Institute Study, p. 17.

⁵⁰ ORR UAC Fact Sheet, May 2014.

Figure 2 uses monthly referrals to ORR to illustrate the trends over time and shows a sharp increase in UAC in ORR custody over the past year. Monthly referrals were less than 1,000 until March 2012. By March 2013, monthly referrals to ORR surpassed 2,000, and the number hit 5,527 in March 2014. In June 2014, 10,128 UAC were transferred to ORR. Bear in mind that not all UAC are referred to ORR; for example, some arriving from contiguous countries voluntarily return home.

U.S. Citizenship and Immigration Services

As mentioned, U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC.⁵¹ If either CBP or ICE find that the child is a UAC and transfer him/her to ORR custody, USCIS will generally take jurisdiction over the asylum application, even where there may be some evidence that the child reunited with a parent or legal guardian after CBP or ICE made the UAC determination. In addition, USCIS has initial jurisdiction over asylum applications filed by UACs with pending claims in immigration court, with a case on appeal before the Board of Immigration Appeals, or with a petition for review with a federal court as of the date of enactment of the TVPRA (December 23, 2008). The UAC must appear at any hearings scheduled in immigration court even after he/she has filed for asylum with USCIS.

The Executive Office for Immigration Review

The U.S. Department of Justice Executive Office for Immigration Review (EOIR) is responsible for adjudicating immigration cases, including removal proceedings. Generally, during an immigration removal proceeding, the foreign national and the U.S. government present testimony so that the immigration judge can make a determination on whether the foreign national is removable or qualifies for some type of relief from removal (i.e., the alien is permitted to remain in the United States either permanently or temporarily.)

EOIR has specific policies for conducting the removal hearings of UAC to ensure that UAC understand the nature of the proceedings, can effectively present evidence about their cases, and have appropriate assistance. The policy guidelines discuss possible adjustments to create “an atmosphere in which the child is better able to present a claim and to participate more fully in the proceedings.” Under these guidelines, the immigration judges are supposed to

- establish special dockets for UAC so that they are separated from the general population;
- allow child-friendly courtroom modifications (e.g., judges not wearing robes, allowing the child to have a toy, permitting the child to testify from a seat rather than the witness stand, allowing more breaks during the proceedings);
- provide courtroom orientations to familiarize the child with the court;
- explain the proceedings at the outset;
- prepare the child to testify; and

⁵¹ For information on UAC and asylum, see CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*, by Ruth Ellen Wasem.

- employ child-sensitive questioning.

Under policy, immigration judges should strongly encourage the use of pro bono legal representation if the child is not represented.

Administrative and Congressional Action

Both the Administration and Congress have begun to take action to respond to the surge in UAC coming across the border. The Administration has developed a working group to coordinate the efforts of the various agencies involved in responding to the issue. It also has opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border and requested funding from Congress to deal with the crisis. Relatedly, Congress is considering funding increases for HHS/ORR and DHS/CBP in each agency's FY2015 appropriations bill as well as supplemental appropriations for FY2014 for related agencies.

Administrative Action

The Administration developed a Unified Coordination Group that is comprised of representatives from all of the relevant agencies involved in responding to this issue.⁵² Federal Emergency Management Agency (FEMA) Administrator Craig Fugate was named as the Federal Coordinating Official, and will be coordinating the federal response to the UAC issue.⁵³ Reportedly, the Unified Coordination Group is looking at the large increase in UAC from an incident management perspective. Administrator Fugate's role is to support the lead agencies, CBP and HHS, by bringing in capacity from throughout the federal government so that the lead agencies can focus on their missions.⁵⁴

CBP maintains primary responsibility for border security operations at and between ports of entry and, working with ICE, provides for the care of unaccompanied children when they are temporarily in DHS custody.⁵⁵ DHS coordinates with the Departments of Health and Human Services, State, and Defense, as well as the General Services Administration and other agencies, to ensure a coordinated and prompt response within the United States in the short term, and in the longer term to work with the sending countries to undertake reforms to address the causes behind the recent migration trends.⁵⁶ DHS is also working with the Central American countries on a

⁵² Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, <http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border>.

⁵³ Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

⁵⁴ Craig Fugate, Federal Coordinating Administration of the Inter-Agency Unified Coordination Group on UAC, "Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children," press release, June 3, 2014.

⁵⁵ ICE is also focusing on dismantling the smuggling organizations who are smuggling UAC into the United States.

⁵⁶ Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014, <http://www.dhs.gov/news/2014/06/02/statement-secretary-johnson-increased-influx-unaccompanied-immigrant-children-border>.

public education campaign to dissuade UAC from attempting to migrate illegally to the United States.⁵⁷

To deal with the influx of UAC, HHS/ORR has made use of a network of group homes operated by nonprofit organizations in Texas and other parts of country. These nonprofit organizations have experience providing the types of services that UAC need (e.g., medical, nutritional, educational). In addition, HHS has reached out to the Department of Defense (DOD) for additional assistance in housing UAC. DOD has made facilities available in Lackland Air Force Base in San Antonio, TX, and at Naval Base Ventura County in Oxnard, CA. The Lackland facility can hold 1,200 UAC and had 1,000 UAC as of June 3, 2014. The facility in Ventura can hold 600 UAC. According to a press report, these facilities are only supposed to be temporary and are not intended to remain open for more than 120 days.⁵⁸

In addition to the aforementioned efforts, the Corporation for National and Community Service (CNCS), which administers AmeriCorps,⁵⁹ and the Department of Justice EOIR have created “Justice AmeriCorps.” Justice AmeriCorps is a grant program that will enroll approximately 100 lawyers and paralegals as AmeriCorps members to provide legal representation to UAC during removal proceedings.⁶⁰

On June 20, 2014, the Administration announced additional efforts it is taking to address this issue. In its “Fact Sheet: Unaccompanied Children from Central America,” the Administration noted that it has partnered with its Central American counterparts in three key areas: “combating gang violence and strengthening citizen security, spurring economic development, and improving capacity to receive and reintegrate returned families and children.” (Security and economic issues are believed to be contributing “push” factors that have led to the massive out migration from Guatemala, Honduras, and El Salvador.) In the fact sheet, the Administration announced assistance it will be providing to Guatemala, Honduras, and/or El Salvador to provide support in the areas of reintegration and repatriation of their citizens, to improve security, to provide economic and educational opportunities and anti-gang and crime prevention programs, and to promote “peace, security, stabilization, and other related rule of law programs.”⁶¹ The Administration has collaborated with the other Central American governments on campaigns to inform would-be migrants of the danger of relying on human smuggling networks *and* on reinforcing that recently arriving children will not benefit from current Administrative policies⁶²

⁵⁷ Alejandro Mayorkas, Deputy Secretary of the Department of Homeland Security, “Press Call Regarding the Establishment of the Inter-Agency Unified Coordination Group on Unaccompanied Alien Children,” press release, June 3, 2014.

⁵⁸ Leslie Berestein Rojas, “Emergency Shelter for Unaccompanied Migrant Kids Opening in Ventura County,” 89.3 *KPCC, Southern California Public Radio*, June 5, 2014, <http://www.scpr.org/blogs/multiamerican/2014/06/05/16777/emergency-shelter-for-unaccompanied-migrant-kids-o/>.

⁵⁹ For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*, by Abigail B. Rudman and Benjamin Collins.

⁶⁰ Department of Justice and the Corporation for National and Community Service, “Justice Department and CNCS Announce New Partnership to Enhance Immigration Courts and Provide Critical Legal Assistance to Unaccompanied Minors,” press release, June 6, 2014, <http://www.nationalservice.gov/newsroom/press-releases/2014/justice-department-and-cnsc-announce-new-partnership-enhance>.

⁶¹ The Administration also announced additional funding for ongoing bilateral assistance to the three countries for a variety of programs. “Fact Sheet: Unaccompanied Children from Central America,” <http://www.whitehouse.gov/the-press-office/2014/06/20/fact-sheet-unaccompanied-children-central-america>.

⁶² For example, the administrative policy entitled Deferred Action for Childhood Arrivals (DACA) grants certain aliens who arrived in the United States prior to a certain period as children some protection from removal for at least two (continued...)

or pending legislation.⁶³ The Administration also announced that it has “enhanced enforcement and removal proceedings.”

On July 10, 2014, the Administration requested \$3.7 billion in supplemental appropriations for FY2014 in relation to the UAC crisis. The Administration requested \$1.8 billion for HHS’s Refugee and Entrant Assistance program to go toward the care of UAC. For CBP, the Administration requested \$432.9 million, which includes \$39.4 million for CBP’s air and marine operations; and for ICE, the Administration requested \$1.1 billion for transportation and enforcement and removal costs, and expanding enforcement efforts in the primary sending countries. The Administration requested \$64 million for DOJ to fund additional immigration judges, attorneys, and court personnel. Of the \$64 million requested, the Administration would set aside \$2.5 million to expand EOIR’s Legal Orientation and Pro Bono Program⁶⁴ and \$15.0 million for “direct legal representation services” to immigrant children. For the Department of State (DOS) and the U.S. Agency for International Development (USAID), the Administration requested \$300.0 million for repatriation and reintegration support and media campaigns in Central America.⁶⁵

Congressional Action

In the President’s original FY2015 budget for the various agencies directly responsible for the UAC population (i.e., specifically in HHS/ORR and DHS budgets), there wasn’t a request for funding increases to help address what has been characterized as a strain on agency resources.⁶⁶

The FY2015 President’s budget request for the HHS/ORR program was originally \$868 million, which is the same amount that was appropriated in FY2014. However, on May 30, 2014, the Office of Management and Budget updated its cost projections related to the UAC crisis and requested a total of \$2.28 billion for FY2015 for ORR’s UAC program.

For DHS agencies, the Administration’s amended request included an additional \$166 million for “CBP overtime, contract services for care and support of UAC, and transportation costs.”⁶⁷ Previously, DHS appropriators criticized the Administration for not requesting additional funding

(...continued)

years.

⁶³ For example, the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) as passed by the Senate would allow certain unlawfully present aliens to adjust to a lawful immigration status.

⁶⁴ For information on EOIR’s Legal Orientation and Pro Bono Program, see <http://www.justice.gov/eoir/press/2010/LegalOrientProBonoFactSheet012710.pdf>

⁶⁵ For additional information on the President’s request, see CRS IN10100, *FY2014 Supplemental Appropriations Request*, by William L. Painter.

⁶⁶ While the Administration did not request an increase in FY2015 funding for the HHS/ORR UAC program, in its FY2014 budget request the Administration requested a \$192 million increase and received an almost \$492 million increase over the FY2013 levels.

⁶⁷ Executive Office of the President Office of Management and Budget memo to Representative Nita Lowey, May 30, 2014.

to deal with the crisis;⁶⁸ and on June 10, 2014, the House Committee on Appropriations approved the Administration's amended request of \$166 million above the budget request.⁶⁹

The Senate Committee on Appropriations Subcommittee on Labor, Health, and Human Services, and Education and Related Agencies approved the Department of Labor, Health, and Human Services, and Education and Related Agencies draft FY2015 appropriations bill on June 10, 2014.⁷⁰ With respect to the UAC program, the subcommittee recommended \$1.94 billion, which is \$34 million less than the Administration's amended request and a more than \$1 billion increase over FY2014 levels. The subcommittee noted the fluidity of the issue and recommended an expansion of HHS transfer authority "to respond to sudden or urgent needs in the future."⁷¹

On July 23, 2014, Senator Mikulski introduced the Emergency Supplemental Act, 2014 (S. 2648). The bill would fund the related agencies and its component parts at a lower amount than what was requested by the Administration. HHS' Administration for Children and Families (ACF)⁷² would receive the largest appropriation, \$1,200 million, for its Refugee Entrant Assistance program to go toward the care of UAC. For CBP and air and marine, the bill would appropriate \$320.5 million and \$22.1 million, respectively; and for ICE, the bill would appropriate \$762.8 million to go toward transportation and enforcement and removal costs. S. 2648 would appropriate \$124.5 million for DOJ. For DOS and USAID, however, the bill would appropriate the same amount the Administration requested, \$300 million. The Senate bill would also appropriate \$2,731 for National Guard-related activities.⁷³

On July 29, 2014, Representative Rogers introduced H.R. 5230. Like the Senate bill, H.R. 5230 would fund the related agencies and its component parts at a lower amount than what was requested by the Administration. Unlike the Senate bill, HHS would not receive the largest appropriation. Under the House bill, HHS would receive an appropriation of \$197 million, while CBP would receive an appropriation of \$405 million. The bill would appropriate ICE \$334 million. For DOJ, H.R. 5230 would appropriate \$22 million. H.R. 5230 would not provide an appropriation for DOS and foreign operations; however, it would provide \$694 million for National Guard-related activities.⁷⁴

Among other things, H.R. 5230 contains various reporting requirements and the following provisions that would change the treatment of UAC:

⁶⁸ See House Subcommittee on DHS Appropriations markup on April 2, 2014, and House Appropriations Committee markup of the DHS appropriations bill on June 10, 2014.

⁶⁹ Previously, the House Subcommittee on DHS Appropriations approved \$77 million above the budget request for ICE transportation costs.

⁷⁰ The bill was approved by voice vote. The bill has not been marked up by full committee. However, on July 23, 2014, the Senate Appropriations Committee released draft copies of the subcommittee-approved bill text and subcommittee report. See <http://www.appropriations.senate.gov/sites/default/files/LHHS%20Bill%2087259.pdf> and <http://www.appropriations.senate.gov/sites/default/files/LHHS%20Report%20w%20Chart%2007REPT.PDF>

⁷¹ See United States Senate Committee on Appropriations, "FY15 LHHS Subcommittee Markup Bill Summary," June 10, 2014.

⁷² The Office of Refugee Resettlement is located in ACF, which is where the Refugee Entrant Assistance Program and UAC Placement Program are located.

⁷³ For additional information on the Senate supplemental bill, see CRS Insight IN10112, *FY2014 Supplemental Appropriations: Senate Introduced S. 2648*, by William L. Painter.

⁷⁴ For additional information on the House supplemental bill, see CRS Report R43666, *Summary Report: FY2014 Supplemental Appropriations*, by William L. Painter.

- H.R. 5230 would amend the William Wilberforce Trafficking Victims Protection Authorization Act of 2008 and the Immigration and Nationality Act to change the procedures for screening and processing unaccompanied alien children who arrive at the border from certain countries. The bill would extend the screening and voluntary return policy currently in place for unaccompanied children from contiguous countries to include any foreign country that the United States reaches an agreement with, and would condition a country's funding for repatriation and reintegration on the country's cooperation in efforts to reduce the flow and facilitation of the repatriation of unaccompanied children.
- With respect to the immigration courts, H.R. 5230 would specify that for removal proceedings in respect to UAC, priority shall be given to those who have most recently arrived in the United States, and would direct the Attorney General within 14 days of enactment to designate up to 40 immigration judges.
- The bill would also require that ORR perform a biometric criminal history check as part of the suitability assessment to place an unaccompanied child with a family member or sponsor in the United States.

Policy Challenges

The Administration has announced an initiative that is aimed at unifying efforts among the various agencies charged with UAC responsibilities, *and* Congress is considering increasing appropriations for the various agencies involved. These efforts, however, are geared toward responding to the immediate crisis, and there is no way to know whether the numbers of UAC what is causing the increase in UAC attempting to illegally enter the United States, there is no clear answer to the root causes. A clearer understanding of the factors that make up the “push-pull” of this extraordinary migration will aid the Administration and Congress in framing the most effective policy responses.

In addition, it is unknown how many of these children will qualify for asylum or other forms of immigration relief that may allow them to remain in the United States, or if many of them will be returned to their home countries. If, as some observers have noted, many of the UAC have family in the United States, and many of those family members, in turn, are not legally present, it raises thorny policy questions. Not only does it hinge on what is in the “best interests of the child,” it also hinges on what is permissible under the Immigration and Nationality Act and other relevant laws.

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