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Unaccompanied Alien Children: An Overview

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Summary

The number of unaccompanied alien children (UAC, unaccompanied children) apprehended at the Southwest border between U.S. ports of entry while attempting to enter the United States without authorization has increased substantially in the past decade. UAC apprehensions, which numbered 16,067 in FY2011, reached what was a record of 68,541 in FY2014. Since then, they have fluctuated considerably, reaching a then new record of 76,020 in FY2019, before declining to 30,557 in FY2020 with the COVID-19 pandemic. In the first 10 months of FY2021, UAC apprehensions reached an all-time peak of 112,192.

UAC are children under age 18 who lack both lawful immigration status in the United States, and a parent or legal guardian in the United States, or a parent or legal guardian in the United States who is available to provide care and physical custody. U.S. policy on UAC treatment and processing is guided by the *Flores Settlement Agreement* of 1997, the Homeland Security Act of 2002, and the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

Children from the *Northern Triangle* countries, El Salvador, Guatemala, and Honduras, now dominate what in prior years was largely a Mexican migrant flow. The TVPRA requires differential treatment of Mexican children, who can be *voluntarily* returned to Mexico, compared to that for children from all other countries, who are sheltered in the United States and put into formal removal proceedings in immigration courts. This origin-country compositional shift has affected federal spending and the federal agencies responsible for unaccompanied children.

The Department of Homeland Security (DHS), the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) share responsibility for UAC processing, treatment, placement, and immigration case adjudication. CBP apprehends and detains UAC arrested at the border. DHS's Immigration and Customs Enforcement (ICE) handles custody transfer and repatriation responsibilities, apprehends UAC in the interior of the country, and represents the government in removal proceedings. HHS's Office of Refugee Resettlement (ORR) coordinates and implements the care and placement of UAC in appropriate custodial settings. DOJ's Executive Office for Immigration Review (EOIR) adjudicates UAC removal cases.

The Obama, Trump, and Biden Administrations, as well as Congress, have taken steps since 2014 to respond to the UAC migrant situation. During the 2014 surge, the Obama Administration established a working group to coordinate agency responses, opened the first large temporary shelters, initiated programs to address root causes of child migration in Central America, and created the Central American Minors (CAM) Refugee and Parole Program.

The Trump Administration also used temporary facilities while instituting a broad range of policies to reduce the flow of all migrants illegally crossing the Southwest border and limit who could apply for asylum. It discontinued the CAM program and implemented a biometric/biographic information-sharing agreement between ORR and DHS that it subsequently modified. In 2020, HHS's Centers for Disease Control and Prevention (CDC) exercised an authority under Title 42 of the U.S. Code (public health) that allowed CBP to promptly expel UAC at the border.

The incoming Biden Administration faced a new record UAC surge and significantly reduced ORR housing capacity. It excepted unaccompanied children from Title 42 expulsions, revoked the biometric/biographic information-sharing agreement between ORR and DHS, employed more temporary influx facilities to relieve CBP from housing thousands of children in its border stations, reactivated the CAM program, and deployed FEMA to assist other federal agencies with their response to the surge.

Congress has responded by providing funding for UAC-related activities in response to annual, supplemental, and emergency appropriations requests.

Contents

Background.....	1
UAC Apprehension Levels	3
Legal Foundation of Current Policy	5
Processing and Care of Apprehended UAC	6
Customs and Border Protection.....	7
Immigration and Customs Enforcement	9
Office of Refugee Resettlement	10
U.S. Citizenship and Immigration Services.....	15
Executive Office for Immigration Review	15
Administration and Congressional Action	17
Obama Administration Action	18
Trump Administration Action	20
Increasing UAC Shelter Capacity.....	20
ORR Sponsor Background Checks and Post-Placement Procedures.....	24
Information Sharing between ORR, ICE, and CBP	25
Zero Tolerance Immigration Enforcement Policy.....	26
Regulations to Replace the Flores Settlement Agreement.....	28
Title 42 Public Health Emergency.....	28
Mexican Immigration Policies	29
Biden Administration Action	29
ORR Shelter Capacity.....	30
Other Actions to Address the UAC Surge.....	33
Explanations for the UAC Surge.....	34
Congressional Funding	35
FY2015	35
FY2016	36
FY2017	37
FY2018	38
FY2019	39
FY2020	40
FY2021	40
FY2022	41

Figures

Figure 1. UAC Apprehensions at the Southwest Border, by Country of Origin, FY2008-FY2021*.....	3
Figure 2. UAC Apprehensions and Referrals to ORR Custody, FY2008-FY2021*.....	14

Tables

Table 1. UAC Initial Case Completion by Outcome and Legal Representation.....	16
Table 2. Temporary ORR Facilities for Unaccompanied Children	31

Contacts

Author Information	41
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Background

Unaccompanied alien¹ children (UAC, unaccompanied children) are defined in statute as children who

- lack lawful immigration status in the United States,²
- are under the age of 18, and
- are without either a parent or legal guardian in the United States, or a parent or legal guardian in the United States who is available to provide care and physical custody.³

Most unaccompanied children are apprehended between U.S. ports of entry (POEs) along the southwestern border with Mexico. Apprehensions are made by the U.S. Border Patrol (USBP), an agency within the Department of Homeland Security's (DHS's), Customs and Border Protection (CBP). Less frequently, unaccompanied children are deemed inadmissible at U.S. POEs along the border by CBP's Office of Field Operations or apprehended in the interior of the country by DHS's Immigration and Customs Enforcement (ICE).⁴

During the 2000s, the number of apprehended unaccompanied children who were subsequently put into removal proceedings and referred to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) averaged 6,700 annually and ranged from a low of about 4,800 in FY2003 to a peak of about 8,200 in FY2007.⁵

Starting in FY2011, UAC apprehensions at the Southwest border increased substantially. By FY2014, they reached a then-record of 68,541, leading some Members of Congress as well as the Obama Administration to characterize the issue as a humanitarian crisis.⁶ UAC apprehensions have since remained relatively high while fluctuating considerably (see "UAC Apprehension

¹ The term *alien* refers to people who are not U.S. citizens or U.S. nationals. Aliens include foreign nationals who are legally present as well as those not legally present. The term is defined in the Immigration and Nationality Act of 1952, as amended (INA), Section 101(a)(3), 8 U.S.C. 1101(a)(3).

² This results from entering the country without inspection (illegally), entering legally with fraudulent documents, or entering the country legally but overstaying the duration of admittance (i.e., a visa overstay). For background information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

³ 6 U.S.C. §279(g)(2). Although these children may have a parent or legal guardian who resides in the United States, they are classified as unaccompanied if the parent or legal guardian cannot provide *immediate* care. Children accompanied by any adult who is not a parent or a designated legal guardian, including family members such as older siblings or aunts and uncles, are also classified as unaccompanied.

⁴ In this report, figures presented for UAC apprehensions (between U.S. POEs) do not include figures for UAC who are deemed inadmissible (at U.S. POEs). The latter constitute a relatively small portion of all UAC processed at the U.S. border and are processed by federal agencies in the same manner as UAC apprehended between POEs. Publicly available figures for the past three fiscal years of inadmissible UAC are presented below in "UAC Apprehension Levels."

⁵ U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement, *Office of Refugee Resettlement Year in Review—FY2013*, December 20, 2013; and HHS, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committees*, p. 38.

⁶ U.S. Congress, Senate Committee on the Judiciary, *Oversight of the Department of Homeland Security*, hearing, 113th Cong., 2nd sess., June 11, 2014 (hereinafter, "*Oversight of the Department of Homeland Security, June 11, 2014*").

Levels” below).⁷ Most recently, UAC apprehensions at the Southwest border reached an all-time peak of 112,192 in the first 10 months of FY2021.⁸

Unaccompanied children’s motivations to migrate to the United States are often multi-faceted and can be challenging to measure analytically.⁹ During the 2014 peak, the Congressional Research Service (CRS) analyzed several major *push* factors contributing to UAC out-migration, many of which are still relevant.¹⁰ These included crime, economic conditions, poverty, and the presence of violent transnational gangs in migrants’ countries of origin. CRS also examined *pull* factors attracting UAC to the United States, such as economic opportunity, family reunification, and more favorable treatment of non-Mexican migrant children by U.S. immigration law.¹¹ At the time, critics of the Obama Administration’s policy response suggested that the sizeable increase in UAC flows resulted from a perception of child-related, immigration policy loopholes.¹² Critics often cited the 2008 statute¹³ that allows UAC from countries other than Mexico and Canada to enter and remain in the United States while awaiting a hearing before an immigration judge (see “Legal Foundation of Current Policy” below). Similar criticisms have been leveled more recently in response to the continued high level of UAC apprehensions at the Southwest border.¹⁴

Recent analyses of the causes of Central American migration to the United States cite lack of employment opportunity and employment instability;¹⁵ socioeconomic and security conditions;¹⁶ corruption and weak governance;¹⁷ and climate change, natural disasters, and ensuing food insecurity.¹⁸ Others argue that the Biden Administration’s more lenient immigration enforcement

⁷ UAC apprehension data for individual years prior to FY2008 are not publicly available. In FY2001, UAC apprehensions numbered 5,385 and UAC referrals from CBP to ORR averaged about 7,100 for the years FY2004-FY2012. See archived CRS Report RL33896, *Unaccompanied Alien Children: Policies and Issues* (available to congressional clients upon request); and HHS, Administration for Children and Families, *Fiscal Year 2017, Justification of Estimates for Appropriations Committees*, p. 243.

⁸ U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. This total represents 9% of total apprehensions of all migrant types (897,213) at the Southwest border by the U.S. Border Patrol.

⁹ See for example, Matthew Lorenzen, “The Mixed Motives of Unaccompanied Child Migrants from Central America’s Northern Triangle,” *Journal on Migration and Human Security*, vol. 5 (2018), pp. 744-767.

¹⁰ See archived CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*. For information on the link between transnational gangs and unaccompanied alien children, see CRS Report R45292, *MS-13 in the United States and Federal Law Enforcement Efforts*; and Jessica Vaughan, “MS-13 Resurgence: Immigration Enforcement Needed to Take Back Our Streets,” Center for Immigration Studies, February 21, 2018.

¹¹ For a more recent analysis, see United Nations High Commission for Refugees, *Families on the Run*, 2020.

¹² Critics cited the Deferred Action for Childhood Arrivals (DACA) policy, begun under the Obama Administration in 2012, which grants certain foreign nationals some protection from removal in two-year increments if they arrived in the United States as children and meet other requirements. See, for example, *Oversight of the Department of Homeland Security, June 11, 2014*. For background information on the DACA policy, see archived CRS Report R44764, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*.

¹³ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457).

¹⁴ See, for example, Lora Ries, “The Left’s Immigration Policies Are Endangering Children,” The Heritage Foundation, March 22, 2021; and Andrew R. Arthur, “Unaccompanied Alien Children and the Crisis at the Border,” Center for Immigration Studies, April 1, 2019.

¹⁵ Catholic Relief Services, *Between Rootedness and the Decision to Migrate*, October 2020.

¹⁶ See CRS In Focus IF11151, *Central American Migration: Root Causes and U.S. Policy*.

¹⁷ See, for example, Charles T. Call, “The imperative to address the root causes of migration from Central America,” Brookings Institution, January 29, 2021.

¹⁸ See, for example, World Bank Group, “Internal Climate Migration in Latin America,” Groundswell Policy Note #3, 2018; Natalie Kitroeff and Daniele Volpe, “‘We Are Doomed’: Devastation From Storms Fuels Migration in

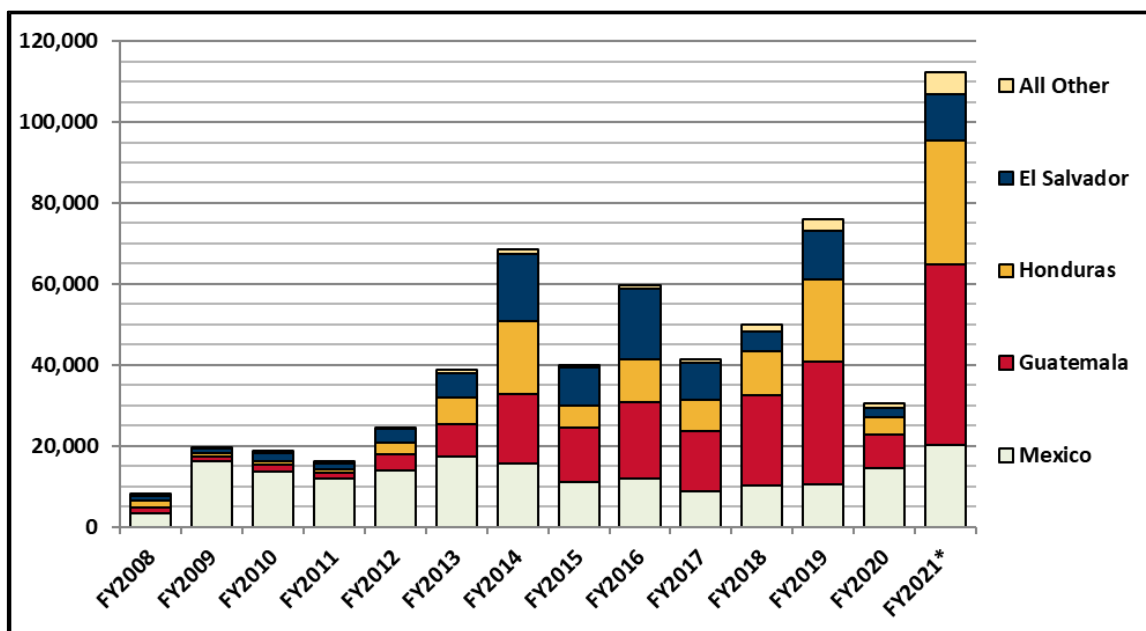
policies relative to those of the Trump Administration¹⁹ have encouraged all migrants, and particularly unaccompanied children, to seek asylum in the United States (see “Biden Administration Action”).

This report reviews UAC apprehension levels since FY2008.²⁰ It discusses the statutes and policies governing treatment, care, and custody of unaccompanied children as well as the responsibilities of the primary federal agencies involved. The report also reviews administrative and congressional actions to address UAC surges from FY2014 to the present.

UAC Apprehension Levels

Relatively high levels of UAC apprehensions emerged 10 years ago, starting from 16,067 in FY2011, to 24,481 in FY2012, and increasing to 38,759 in FY2013 (**Figure 1**). In FY2014, CBP apprehended 68,541 UAC, more than in any of the previous six years and more than four times as many as in FY2011. Since FY2014, UAC apprehensions have fluctuated considerably each year.

Figure 1. UAC Apprehensions at the Southwest Border, by Country of Origin, FY2008-FY2021*



Sources: FY2008-FY2013: United States Border Patrol, “Juvenile and Adult Apprehensions—Fiscal Year 2013.” FY2014-FY2018: Customs and Border Protection, “U.S. Border Patrol Southwest Border Apprehensions by

Honduras,” *New York Times*, June 7, 2021; Kevin Sieff, “The reason many Guatemalans are coming to the border? A profound hunger crisis,” *Washington Post*, April 1, 2021; Sabrina Rodriguez, “It’s Not a Border Crisis. It’s a Climate Crisis,” *Politico*, July 19, 2021; Jacob Soboroff and Julia Ainsley, “Trump admin ignored its own evidence of climate change’s impact on migration from Central America,” *NBC News*, September 21, 2019; and Jeff Masters, “Fifth Straight Year of Central American Drought Helping Drive Migration,” *Scientific American*, December 23, 2019.

¹⁹ See, for example, U.S. Department of Homeland Security, “Unaccompanied Alien Children and Family Units Are Flooding the Border Because of Catch and Release Loopholes,” press release, February 15, 2018 (issued during the Trump Administration).

²⁰ FY2008 represents the first year in which CRS could locate publicly available annual UAC apprehension data.

Sector FY2018.” FY2019-FY2021: U.S. Border Patrol, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

Notes: *FY2021 includes the first 10 months of the fiscal year. Data on UAC deemed inadmissible are excluded from Figure 1 because CBP did not include them prior to FY2017. Data for FY2020 and FY2021 represent encounters that include both apprehensions under Title 8 as well as expulsions under Title 42.

In 2020, at the outset of the global COVID-19 pandemic, the Trump Administration temporarily restricted the entry of certain foreign nationals at land and coastal borders to limit the potential spread of the virus. The Centers for Disease Control and Prevention (CDC) issued an order referred to as *Title 42* (from the section of the U.S. Code dealing with public health) on March 21, 2020, that suspended the introduction of certain foreign nationals traveling from Mexico and Canada into the United States.²¹ Under Title 42, CBP promptly expelled most unaccompanied children to Mexico, their country of last transit, instead of processing them under immigration law (Title 8). The use of Title 42 combined with the pandemic’s restrictive impact on migration contributed to a drop in *encounters* (apprehensions and expulsions) of unaccompanied children from 76,020 in FY2019 to 30,557 in FY2020.

In November 2020, a federal district court judge halted the application of the March CDC order to unaccompanied children because it violated the Trafficking Victims Protection Reauthorization Act (TVPRRA) and other laws governing UAC processing (see “Legal Foundation of Current Policy” below).²² On January 29, 2021, a federal circuit court judge stayed the November injunction,²³ which would have allowed the Biden Administration to continue expelling unaccompanied children under Title 42. In February 2021, the Administration formally exempted unaccompanied children from Title 42 expulsions, requiring that they be processed under Title 8 and put into formal immigration proceedings.²⁴

In the first 10 months of FY2021, UAC encounters rebounded to a new peak of 112,192, representing 9% of the 1,276,194 USBP encounters at the Southwest border.²⁵ The UAC encounters figure exceeds levels for all previous fiscal years, even while representing only five-sixths of the fiscal year. DHS expects UAC apprehensions to continue at their current elevated levels for the remainder of FY2021.²⁶

In FY2020 and FY2021, there were 142,749 combined UAC encounters. Of these, 127,164 (89%) were Title 8 apprehensions and 15,585 (11%) were Title 42 expulsions. Most of the expulsions

²¹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Control of Communicable Diseases; Foreign Quarantine: Suspension of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,” 85 *Federal Register* 16559, March 24, 2020; and U.S. Department of Health and Human Services, Center for Disease Control and Prevention, “Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists,” 85 *Federal Register* 17,060, March 26, 2020.

²² Suzanne Monyak, “DC Judge Blocks Policy To Expel Migrant Kids From Border,” *Law360*, November 18, 2020.

²³ Alyssa Aquino, “DC Circ. Lifts Block On Migrant Children Expulsion Policy,” *Law360*, January 29, 2021.

²⁴ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination,” 86 *Federal Register* 9942, February 17, 2021. CDC reaffirmed that exemption in July. See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Title 42 Order Reassessment and Exception for Unaccompanied Noncitizen Children,” media statement, July 16, 2021.

²⁵ U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²⁶ Alicia A. Caldwell and Michelle Hackman, “Border Crossings by Migrant Children to Rise Sharply, U.S. Estimates Show,” *Wall Street Journal*, March 26, 2021.

(10,939, or 70%) occurred during FY2020, and in both fiscal years, expulsions mainly affected children from Mexico (11,506, or 74%).

As noted above, figures presented for UAC apprehensions (between U.S. POEs) do not include figures for UAC who are deemed inadmissible or expelled at U.S. POEs. Those UAC encounters numbered 1,599 for the first 10 months of FY2021, or just under 2% of total UAC encounters during that period.²⁷

Mexican children no longer dominate UAC apprehensions as they did prior to FY2012.²⁸ In FY2009, for example, children from Mexico and the *Northern Triangle* countries (El Salvador, Guatemala, and Honduras) represented 82% and 17%, respectively, of the 19,668 UAC apprehensions that year. By FY2021, those proportions had flipped, with Mexican and Northern Triangle children respectively representing 18% and 77% of all UAC apprehensions. This country-of-origin shift has affected federal agencies that process and shelter unaccompanied children because of the different responses to children from contiguous countries versus children from all other countries (see “Processing and Care of Apprehended UAC” below).²⁹

The majority of UAC apprehensions in the first 10 months of FY2021 have occurred within the Rio Grande (TX), El Paso (TX), and Tucson (AZ) border sectors (51%, 17%, and 13%, respectively).³⁰ Data on UAC who were in ORR care each month indicate that during the first eight months of FY2021, the female UAC proportion was 30% and the proportion of UAC under age 15 was 24%.³¹

Legal Foundation of Current Policy

A court settlement and two laws most directly guide U.S. policy on 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)³² led to a series of lawsuits against the U.S. government that eventually resulted in a 1997 consent decree, the *Flores Settlement Agreement (Flores Agreement)*.³³ The *Flores Agreement* established a nationwide policy for the detention, treatment, and release of UAC and recognized the particular vulnerability of UAC as minors while detained

²⁷ Prior to FY2017, CBP did not publish statistics on UAC deemed inadmissible, making it difficult to compare apprehensions before and after that fiscal year. U.S. Customs and Border Protection, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²⁸ UAC from “all other” countries made up less than 5% of total UAC apprehensions over the period presented. The absolute number of such UAC apprehensions totaled 1,165 in FY2020 and 5,253 in the first 10 months of FY2021. U.S. Border Patrol, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>.

²⁹ For an example of how high UAC apprehension levels have affected federal agencies, see Letter from Kirstjen M. Nielsen, Secretary of Homeland Security, to United States Senate and U.S. House of Representatives, March 29, 2019.

³⁰ U.S. Customs and Border Protection, “Southwest Land Border Encounters (By Component),” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component>.

³¹ U.S. Department of Health and Human Services, “Latest UAC Data—FY2021,” June 24, 2021, <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2021/index.html>.

³² The Homeland Security Act of 2002 dissolved the former Immigration and Naturalization Service (INS) and assigned its functions to the Departments of Homeland Security, Justice, and Health and Human Services.

³³ *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997). Many terms of the agreement have been codified at 8 C.F.R. §236.3, §1236.3.

without a parent or legal guardian.³⁴ 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 drafted regulations.³⁵

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 DHS and ORR. To DHS, the law assigned responsibility for the apprehension, transfer, and repatriation of UAC. To ORR, the law assigned responsibility 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 responsibilities.³⁶ The HSA also established the statutory definition of UAC as unauthorized minors not accompanied by a parent or legal guardian. Despite these developments, advocates continued to argue that the *Flores Agreement* had still not been fully implemented.

Responding to ongoing concerns that CBP was not adequately screening apprehended UAC for evidence of human trafficking or persecution, 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 who are removed are safely repatriated to their countries of nationality or of last habitual residence.

The TVPRA set forth special rules for UAC from contiguous countries (i.e., Mexico and Canada), requiring that they be screened for evidence of human trafficking within 48 hours of apprehension. It mandated that unaccompanied children determined not to be human trafficking victims or not to have a fear of returning to their home country or country of last habitual residence be returned to their countries without additional penalties. It also required the Secretary of State to negotiate agreements with Mexico and Canada to manage UAC repatriation.

The TVPRA mandated that unaccompanied children from noncontiguous countries—as well as UAC from contiguous countries apprehended at the border and determined to be human trafficking victims or to have a fear of returning to their home country or country of last habitual residence, or who are apprehended away from the border—be transferred to the care and custody of ORR and placed in standard removal proceedings.

Processing and Care of Apprehended UAC

Several DHS agencies handle the apprehension, processing, and repatriation of UAC, while ORR handles the care and custody of UAC. The Executive Office for Immigration Review (EOIR) in the U.S. Department of Justice (DOJ) conducts immigration removal proceedings.

CBP apprehends, processes, and temporarily holds UAC along U.S. borders. DHS's ICE physically transports UAC referred to ORR from CBP to ORR custody. ORR is responsible for sheltering UAC while they await an immigration hearing. DHS's U.S. Citizenship and

³⁴ See U.S. Department of Homeland Security, Office of Inspector General, *CBP's Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010.

³⁵ 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.

³⁶ ORR assumed care of UAC on March 1, 2003. P.L. 107-296, Section 462.

Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by UAC after the children have been placed in removal proceedings. EOIR conducts immigration proceedings that determine whether UAC may be allowed to remain in the United States or must be deported to their home countries. ICE is responsible for repatriating UAC who are ordered removed from the United States. The following sections describe each agency's role.

Customs and Border Protection

CBP's USBP and Office of Field Operations (OFO) apprehend and process unaccompanied children that arrive between U.S. POEs or at POEs, respectively.³⁷ Most UAC are apprehended between POEs and are transported to USBP facilities. UAC arriving at POEs are escorted to CBP secondary screening areas.

When CBP confirms that a foreign national under age 18 lacks U.S. lawful immigration status and is unaccompanied by a parent or legal guardian, the minor is classified as an unaccompanied alien child under the Immigration and Nationality Act (INA), and processed for immigration violations. The consulate that represents the child's country of citizenship is notified that DHS has detained him or her. CBP also collects and enters identifying information about the UAC into DHS databases.³⁸ With the exception of Mexican and Canadian UAC who meet the three criteria discussed below, the TVPRA requires that USBP turn UAC over to ICE for transport to ORR within 72 hours of determining that the children meet the UAC definition.

As mentioned, the TVPRA directed 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 repatriated safely to their country of nationality or last habitual residence. Of particular significance, the TVPRA requires CBP to follow certain criteria for UAC who are nationals or habitual residents of a contiguous country.³⁹ Although the screening provision only applies to UAC from contiguous countries, DHS issued a policy in March 2009 that effectively mandated screening for all UAC.⁴⁰

The INA requires that CBP personnel screen unaccompanied children from contiguous countries within 48 hours of apprehension to determine if the following statements are true:

- 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 of being trafficked upon return to his/her country of nationality or last habitual residence;
- the UAC does not have a fear of returning to his/her country of nationality or last habitual residence owing to a credible fear of persecution; and

³⁷ USBP oversees immigration and customs enforcement *between* POEs. OFO oversees the inspection of travelers and goods *at* POEs. All UAC are processed, regardless of where they enter, but only UAC that arrive between U.S. POEs are apprehended.

³⁸ UAC processing includes gathering *biographic* data such as name, age, citizenship, and accompanied or unaccompanied status. USBP agents also collect *biometric* data on UAC (e.g., fingerprints) and query relevant immigration, terrorist, and criminal databases.

³⁹ 8 U.S.C. §1232(a)(2).

⁴⁰ Testimony of Office of Immigration and Border Security Acting Deputy Assistant Secretary Kelly Ryan, U.S. Congress, Senate Committee on the Judiciary, *Trafficking Victims Protection Reauthorization Act: Renewing the Commitment to Victims of Human Trafficking*, 112th Cong., 1st sess., September 14, 2011.

- the UAC is able to decide independently to return voluntarily to his/her country of nationality or last habitual residence.⁴¹

If CBP determines that all three of the above statements are true about a UAC and, therefore, that he or she is inadmissible under the INA,⁴² the UAC must return to his or her home country. In such cases, CBP can permit the child to withdraw his/her application for admission,⁴³ allowing the minor to return voluntarily to his or her country of nationality or last habitual residence.

The TVPRA contains provisions for the treatment of UAC from contiguous countries while in the care and custody of CBP, and it provides guidance for CBP personnel on repatriating minors. It requires the Secretary of State to negotiate agreements with Mexico and Canada for repatriation of their UAC that serve to protect the children from trafficking. These agreements, at minimum, must include provisions that (1) ensure the handoff of the minor children to an appropriate government official; (2) prohibit returning UAC outside of “reasonable business hours;” and (3) require border personnel of the contiguous countries be trained in the terms of the agreements.

Unaccompanied children from noncontiguous countries who are not subject to TVPRA’s special repatriation procedures for UAC from Mexico or Canada (i.e., withdrawal of application for admission) are placed in standard removal proceedings pursuant to INA Section 240. The TVPRA specifies that in standard removal proceedings, UAC are eligible for voluntary departure under INA Section 240B at no cost to the child.⁴⁴

As noted, OFO processes UAC apprehended at POEs at CBP secondary screening areas and UAC apprehended between POE are processed at USBP facilities. In January 2008, CBP issued a memorandum entitled “Hold Rooms and Short Term Custody.”⁴⁵ Following the issuance of this policy, nongovernmental organizations (NGOs) criticized the Border Patrol for failing to uphold related provisions in current law and the *Flores Agreement*.⁴⁶ In 2010, the DHS Office of Inspector General (OIG) issued a report concluding that while CBP was in general compliance with the *Flores Agreement*, it needed to improve its handling of UAC.⁴⁷ In 2015, CBP issued

⁴¹ P.L. 110-457, Title II, §235(a)(2)(A). Some observers allege that USBP agents routinely screen apprehended Mexican unaccompanied children inadequately in order to summarily return most of them to Mexico. See, for example, Kiera Coulter et al., “A Study and Analysis of the Treatment of Mexican Unaccompanied Minors by Customs and Border Protection,” *Journal on Migration and Human Security*, vol. 8 (2020), pp.96-110; Government Accountability Office (GAO), *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521, July 2015; and Betsy Cavendish and Maru Cortazar, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors*, Appleseed, Washington, DC, 2011 (hereinafter, “*Children at the Border*”). In contrast, OFO agents at U.S. POEs in FY2020 reportedly referred half of all presenting unaccompanied children to ORR. See Amnesty International, “Facts and figures: Deportations of unaccompanied migrant children by the USA and Mexico,” June 11, 2021.

⁴² Before admitting a foreign national to enter the United States, CBP must confirm or establish the individual’s admissibility according to the grounds for inadmissibility in INA §212(a), 8 U.S.C. §1182(a).

⁴³ Under INA §235(a)(4), apprehension at the border constitutes an application for admission to the United States. In this case, “withdrawal of application for admission” permits the UAC to return immediately to Mexico or Canada and avoid administrative or other penalties.

⁴⁴ For more information on voluntary departure, voluntary return, and withdrawal of application for admission, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

⁴⁵ UAC are held in “holdrooms” at Border Patrol stations. The 2008 memorandum, which is publicly 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, “Hold Rooms and Short Term Custody,” January 31, 2008.

⁴⁶ See, for example, *Children at the Border*.

⁴⁷ U.S. Department of Homeland Security, Office of Inspector General, *CBP’s Handling of Unaccompanied Alien Children*, OIG-10-117, Washington, DC, September 2010. The OIG report did not address whether CBP was complying with the TVPRA and was unable to determine whether CBP personnel had sufficient training to comply

standards to address the interaction of its personnel with detained individuals.⁴⁸ Yet, NGOs continued to criticize CBP for its treatment of UAC and other detainees.⁴⁹ In 2018, a multi-disciplinary team from DHS's OIG conducted unannounced site inspections at nine CBP facilities within the El Paso and Rio Grande Valley border sectors in Texas. The OIG reported that the CBP facilities appeared to be operating in compliance with the 2015 standards.⁵⁰

In 2017, the judge overseeing the Flores Agreement appointed the CBP Chief Accountability Officer as the CBP Juvenile Coordinator (JC) to oversee the agency's compliance with the agreement. In 2019, CBP created the Juvenile Coordinator's Office (JCO) to assist with this responsibility. The JC and JCO reportedly conduct announced and unannounced site visits to assess CBP facilities and interview children and/or parents regarding their temporary CBP custody experiences.⁵¹

During the early months of 2021, CBP processing facilities that temporarily housed unaccompanied minors were filled far beyond capacity following record levels of monthly UAC apprehensions.⁵² The crowded conditions resulted from a processing backup created by reduced ORR capacity to accept the children from CBP into its shelter network. That capacity shortfall, in turn, resulted from some shelters having closed in response to declining demand during the COVID-19 pandemic. Open ORR shelters also reduced capacity to adhere to CDC social distancing guidelines.⁵³ ORR has since expanded its housing capacity by using temporary influx and emergency intake facilities (see "Increasing UAC Shelter Capacity" below), and CBP facility overcrowding has declined accordingly.⁵⁴

Immigration and Customs Enforcement

ICE is responsible for physically transferring UAC from CBP to ORR custody. ICE also may apprehend UAC in the U.S. interior during immigration enforcement actions. In addition, ICE attorneys represent the government in removal proceedings before EOIR.

ICE is also responsible for the physical removal of all foreign nationals, including UAC, who have final orders of removal or who have elected to depart voluntarily from the United States while in removal proceedings.⁵⁵ ICE notifies the country of the foreign national being removed

with the provisions in the *Flores Agreement*.

⁴⁸ U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015.

⁴⁹ See Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells*, February 2018; and the University of Chicago Law School, International Human Rights Clinic, the American Civil Liberties Union (ACLU) Border Litigation Project, and ACLU Border Rights, *Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection*, May 2018.

⁵⁰ U.S. Department of Homeland Security, *Office of Inspector General, Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*, OIG-18-87, September 28, 2018.

⁵¹ Testimony of Benjamin "Carry" Huffman, CBP Executive Assistant Commissioner, Enterprise Services, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, 117th Cong., 1st sess., June 10, 2021.

⁵² See, for example, Rosa Flores and Sara Weisfeldt, "Border facilities holding migrant children are 'stretched beyond thin' with 'profound overcrowding,' court monitors say," *CNN*, April 5, 2021.

⁵³ See, for example, Mark Greenberg, "Hampered by the Pandemic: Unaccompanied Child Arrivals Increase as Earlier Preparedness Shortfalls Limit the Response," *Migration Policy Institute*, March 2021.

⁵⁴ Camilo Montoya-Galvez, "Overcrowding reduced at largest border facility for migrant children, but challenges remain," *CBS News*, May 6, 2021.

⁵⁵ For more information on Voluntary Departure, see CRS Report R43892, *Alien Removals and Returns: Overview and*

from the United States.⁵⁶ To safeguard the welfare of all UAC, ICE has established policies for repatriating UAC, including

- returning UAC only during daylight hours;
- recording transfers by ensuring that receiving government officials or designees sign for custody;
- returning UAC through a port designated for repatriation;
- providing UAC the opportunity to communicate with a consular official prior to departure for the home country; and
- preserving the unity of families during removal.⁵⁷

To implement a removal order for a UAC, however, the U.S. government must secure travel documents from his or her country. As such, the United States depends on the willingness of foreign governments to accept the return of their nationals. Each country has documentary requirements for repatriation of their nationals.⁵⁸ While some allow ICE to use a valid passport to remove a foreign national (if the foreign national possesses one), others require ICE to obtain a specific repatriation document.⁵⁹ According to one report, obtaining travel documents can become problematic, because countries may change their documentary requirements or object to a juvenile's return.⁶⁰

Once the foreign country has issued travel documents, ICE arranges the UAC's transport. If the return involves plane travel, ICE personnel accompany the UAC to his or her home country. ICE uses commercial airlines for most UAC removals. ICE provides two escort officers for each UAC.⁶¹ Mexican UAC are repatriated in accordance with nine Local Repatriation Agreements (LRAs) covering the full length of the U.S.-Mexico border, which require that ICE notify the Mexican Consulate for each UAC repatriated. Additional specific requirements apply to each LRA (e.g., specific hours of repatriation).⁶²

Office of Refugee Resettlement

ORR's Unaccompanied Alien Children Program provides for custody and care of unaccompanied minors who have been apprehended and referred by CBP, ICE, or other federal agencies. The

Trends.

⁵⁶ ICE uses a country clearance to notify a foreign country, through a U.S. Embassy abroad, that a foreign national is being repatriated. In addition, when ICE personnel escort the alien during the repatriation, the country clearance process notifies the U.S. Ambassador abroad that U.S. government employees will be travelling to the country.

⁵⁷ ICE Congressional Relations, email correspondence, May 16, 2014, and confirmed by CRS, August 6, 2019.

⁵⁸ Depending on the country and where the UAC is housed, consular officer from that country 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 (hereinafter, "*The Flow of Unaccompanied Children*").

⁵⁹ Annex 9 of the Civil Aviation Convention, Section 5.21, requires that countries issue travel documents, but the convention lacks an enforcement mechanism.

⁶⁰ *The Flow of Unaccompanied Children*, p. 27. For more information, see CRS In Focus IF11025, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*.

⁶¹ An additional officer is added for each group exceeding five UAC. The gender of the officers corresponds to the gender of the children repatriated. ICE Congressional Relations, email correspondence, May 16, 2014, and confirmed by CRS, August 6, 2019.

⁶² *Ibid.* For more information, see U.S. Department of Homeland Security, "Updated U.S. Mexico Local Repatriation Arrangements," <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>, May 28, 2019.

TVPPRA requires that UAC in HHS custody “be promptly placed in the least restrictive setting that is in the best interest of the child.”⁶³ The HSA requires ORR to *develop a plan* to ensure the timely appointment of legal counsel for each UAC,⁶⁴ ensure the child’s interests are considered in decisions and actions relating to care and custody, and oversee the infrastructure and personnel of UAC residential facilities, among other responsibilities.⁶⁵ Like CBP, ORR screens each 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 child would be at risk if returned to his/her country of nationality or last habitual residence; and if the child has a possible claim to asylum.⁶⁶

ORR arranges to house the unaccompanied child within its network of shelters while seeking to place him or her with a sponsor, usually a family member. According to ORR, the majority of the youth are cared for initially through a network of about 200 state-licensed shelters in 22 states.⁶⁷ These ORR-funded and supervised care providers offer classroom education, mental health and medical health services,⁶⁸ case management, and socialization and recreation. ORR oversees different types of shelters to accommodate unaccompanied children with different circumstances, including standard shelter care, secure care, and transitional foster care.⁶⁹ Unaccompanied children spent an average of 35 days in ORR care in FY2014, 38 days in FY2016, 60 days in FY2018, and 102 days in FY2020. In the first six months of FY2021, ORR reported that children spent an average of 35 days in ORR shelters.⁷⁰

⁶³ §§235(a)-235(d) of TVPPRA; 8 U.S.C. §1232(c)(2).

⁶⁴ Section 462(b) of the HSA describe conditions for the care and placement of UAC in federal custody. Regarding legal counsel, the statutory language states: “...the Director of the Office of Refugee Resettlement shall be responsible for ... coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act.”

⁶⁵ Section 235(c) of the TVPPRA 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.

⁶⁶ As noted previously, all UAC are initially screened by CBP for trafficking victimization or risk as well as possible claims to asylum, regardless of country of origin. CBP shares some of this information with ORR. For more information, see U.S. Department of Health and Human Services, Office of Inspector General, “Separated Children Placed in Office of Refugee Resettlement Care,” HHS-OIG Issue Brief, OEI-BL-18-00511, January 2019.

⁶⁷ U.S. Department of Health and Human Services, Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, Fact Sheet, May 5, 2021, (hereinafter, “*ORR UAC Fact Sheet*”); and U.S. Department of Health and Human Services, Administration for Children and Families, *Report to Congress on Unaccompanied Alien Children Program, Facility Oversight* (undated). Some communities and states have objected to unaccompanied children being placed in their jurisdictions (either in ORR shelters or through family placements) as well as the lack of notification of such placements by ORR. See for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Impact on Local Communities of the Release of Unaccompanied Alien Minors and the Need for Consultation and Notification*, hearing, 113th Cong., 2nd sess., December 10, 2014.

⁶⁸ For more information on ORR services provision for unaccompanied children, see U.S. Department of Health and Human Services, Administration for Children and Families, *ORR Guide: Children Entering the United States Unaccompanied*, updated February 17, 2021 (hereinafter, “*ORR Guide*”), Section 3.

⁶⁹ Standard shelter care refers to a minimally restrictive level of care for most UAC without special needs. Secure care facilities are generally reserved for children with behavioral issues, a history of violent offenses, or who pose a threat to themselves or others. For more information on shelters and ORR’s policies for placing unaccompanied children in secure settings, see *ORR Guide*, Sections 1.21 and 1.24; and *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997), Exhibit 2.

⁷⁰ Sources for FY2014: *ORR UAC Fact Sheet*, May 2014; for FY2016 and FY2018: ORR Legislative Affairs, email to CRS on February 2, 2019; for FY2020: ORR “Facts and Data,” <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data>, March 11, 2021; and for FY2021: *ORR UAC Fact Sheet*.

ORR shelter personnel facilitate the release of UAC to family members or other sponsors who are able to care for them.⁷¹ 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.⁷² Removal proceedings initiated by CBP continue following an unaccompanied child's placement with a sponsor.

In making these placement determinations, ORR conducts a background investigation of potential sponsors and requires them to complete a sponsor assessment process that identifies risk factors and other potential safety concerns. Background checks include a criminal public records check and a sex-offender registry check. If ORR has a safety concern about a related sponsor or seeks to release the child to an unrelated sponsor, background checks are also conducted on all adult household members and individuals identified in the potential sponsor's care plan.⁷³ In a range of circumstances, ORR may require a home study as an additional precaution.⁷⁴ In most cases, ORR must notify a UAC's consulate of his or her custody.

ORR must make a determination prior to unification that the sponsor is capable of providing for the child's physical and mental well-being.⁷⁵ In addition, the parent or guardian is required to complete a Parent Reunification Packet to attest that he or she agrees to take responsibility for the UAC and provide proper care.⁷⁶ ORR reports that most children it serves are reunified with family members.⁷⁷

In cases where a sponsor cannot be located, UAC are placed in a long-term care setting, such as community based foster care or extended care group home.⁷⁸ According to ORR, long-term foster

⁷¹ *ORR UAC Fact Sheet*.

⁷² *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997), p. 10.

⁷³ ORR requires fingerprinting for potential sponsors who are unrelated individuals; non-immediate family members; individuals who have never previously served as the unaccompanied child's primary caregiver; or immediate relatives (and non-sponsor household members) where ORR has identified risk factors, ordered a home study, or considers the UAC to be especially vulnerable. Fingerprints are cross-checked with the Federal Bureau of Investigation's (FBI) National Criminal History Check and state repository records. In the process, DHS arrest records are also queried.

⁷⁴ A home study is an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being and involves background checks of both the sponsor and any adult household members, one or more home visits, a face-to-face interview with the sponsor and potentially with other household members, and post-release services. Pursuant to the TVPRA, home studies are required when the child (1) is a victim of a severe form of trafficking in persons, (2) has a recognized disability as defined by Section 3 of the Americans with Disabilities Act, or (3) has been a victim of harmful abuse. ORR also requires home studies for sponsors who possess risk factors for abuse, for unrelated sponsors seeking to sponsor multiple children, and for unrelated sponsors of children under age 13. See *ORR Guide*, Section 2.

⁷⁵ *ORR UAC Fact Sheet*. During the Trump Administration, ORR increased the amount and type of information collected from prospective sponsors. See "Information Sharing between ORR, ICE, and CBP" below.

⁷⁶ U.S. Department of Health and Human Services, Administration for Children & Families, Unaccompanied Alien Children Program, *ORR Family Reunification Packet for Sponsors (English/Español)*, <https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services>, April 2, 2021.

⁷⁷ In the first six months of FY2021, 91% of discharged UAC were released by ORR to a sponsoring family member. (Of this group 46% were parents or legal guardians, and 45% were other close relatives.) About 9% of discharged UAC were released to other sponsors, such as distant relatives and unrelated adult individuals. Source: U.S. Department of Health and Human Services, "Latest UC Data – FY2021," <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2021/index.html>, May 7, 2021. Unaccompanied minors who are not discharged represent children without identified sponsors who exited ORR care, including children who aged out (reached age 18), children who accepted voluntary departure or who received a designation as an Unaccompanied Refugee Minor, or other discharge options.

⁷⁸ According to ORR, a child is a candidate for long term care if: he or she is expected stay in ORR custody for at least

care involves “ORR-funded community-based foster care placements and services to which eligible unaccompanied children are transferred after a determination is made that the child will be in ORR custody for an extended period of time. Unaccompanied children in ORR long-term foster care typically reside in licensed foster homes, attend public school, and receive community-based services.”⁷⁹

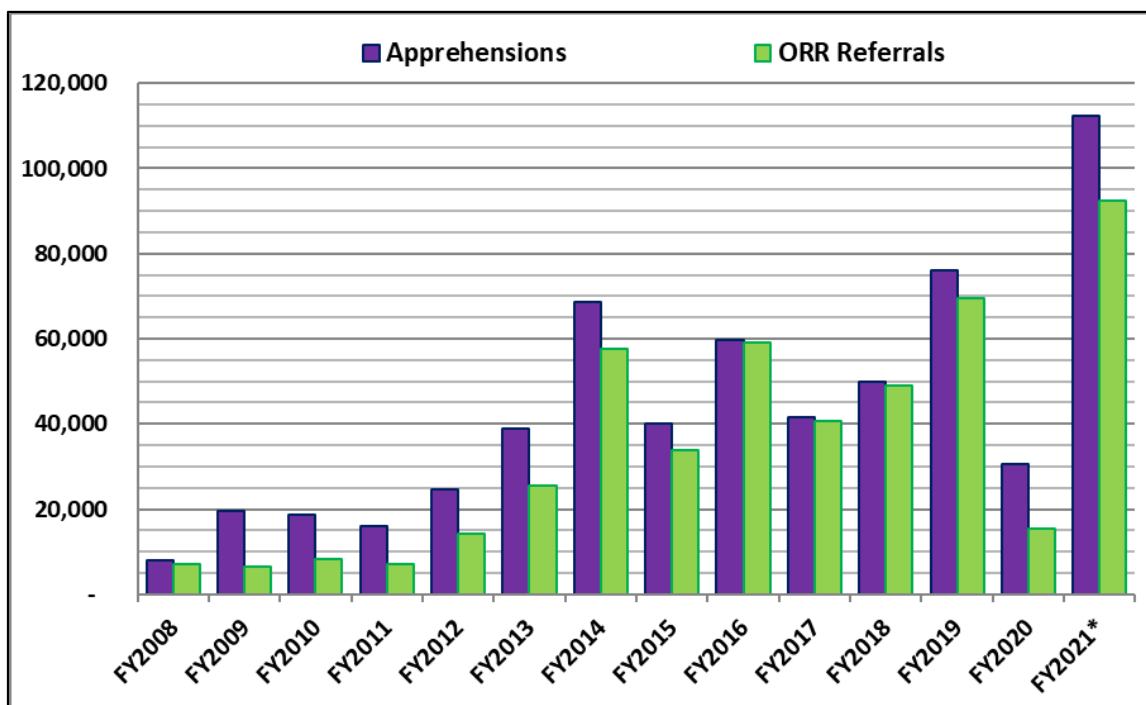
Post-placement, ORR requires that its shelter care providers conduct a *Safety and Well Being Follow-Up Call* 30 days after the child’s release to confirm the child’s safety, living arrangements, school enrollment, and awareness of upcoming court dates.⁸⁰ For cases that required a home study, ORR provides *Post-Release Services* that link children and their sponsors to community based services. Similar services are also offered by the agency’s *National Call Center*. Children, sponsors, and others can report confirmed or suspected incidents of sexual abuse or harassment that occurred at ORR shelters through the agency’s *UAC Sexual Abuse Hotline*. Concerns have been raised repeatedly that ORR’s post-placement procedures are insufficient to ensure the well-being and safety of all placed children (see “ORR Sponsor Background Checks and Post-Placement Procedures”).⁸¹

four months for lack of a viable sponsor; a legal service provider has identified the child as potentially eligible for immigration relief (unless waived by ORR); and the child is under age 17½ when placed. ORR may also consider a long-term care placement for an unaccompanied child who will have a longer stay due to other circumstances. Such placement is prioritized for children under age 13, sibling groups with one child younger than 13, pregnant and parenting teens, and children with special needs, including mental health needs. See *ORR Guide*, Section 1.2.6.

⁷⁹ U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, email correspondence, May 23, 2019. For more information, see *ORR Guide*, Section 3.6.

⁸⁰ *ORR Guide*, Section 6.1.

⁸¹ For an assessment of ORR’s post-placement services, see Mark Greenberg, Kylie Grow, Stephanie Heredia, Kira Monin, and Essey Workie, *Strengthening Services for Unaccompanied Children in U.S. Communities*, Migration Policy Institute, June 2021.

Figure 2. UAC Apprehensions and Referrals to ORR Custody, FY2008-FY2021*

Source: Apprehensions: See sources for **Figure 1** above; Referrals: FY2008-FY2020: HHS, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committees*, p. 38; FY2021: HHS, Office of Inspector General, *Toolkit: Insights From OIG's Work on the Office of Refugee Resettlement's Efforts To Care for Unaccompanied Children*, OEI-09-21-00220, May 2021, Exhibit 1; and unpublished data provided by ORR Legislative Affairs Office to CRS for June and July 2021.

Notes: *FY2021 figures represent the first 10 months of the fiscal year, through July 2021. FY2021 ORR referral figure is through May 13, 2021. Data for FY2020 and FY2021 represent encounters that include both apprehensions under Title 8 as well as expulsions under Title 42.

Figure 2 shows both annual UAC apprehensions and annual referrals of unaccompanied children to ORR since FY2008. As expected, ORR referrals increase with apprehensions, and as children from Central America increasingly dominated total UAC apprehensions, the percentage of apprehended UAC referred to ORR also increased. In FY2009, when unaccompanied children from the three Northern Triangle countries comprised 17% of all UAC apprehensions, the proportion of children referred to ORR was 34% of total apprehensions. In FY2019, when unaccompanied children from Northern Triangle countries comprised 86% of all UAC apprehensions, the proportion of UAC referred to ORR was 91%.⁸² This trend reversed in FY2020, when the COVID-19 pandemic lowered the Central American proportion of all unaccompanied minors apprehended at the Southwest border. It resumed in FY2021 following the termination of Title 42 treatment for unaccompanied children.

A portion of unaccompanied children in ORR custody will turn age 18 while still in ORR custody, thereby *aging out* of UAC status as defined in statute. When that occurs, ORR's legal authority to retain custody of the children ends. ORR must then turn those children over to ICE custody where they are typically detained in adult detention facilities. Concerns have been raised about the potentially traumatic impact to children of abruptly transitioning from a child welfare

⁸² See sources for **Figure 1** and **Figure 2**. As noted above, not all UAC are referred to ORR; for instance, many UAC from contiguous countries voluntarily return home.

setting to an adult detention setting on or soon after their 18th birthdays.⁸³ Some have attributed this practice to a lack of ORR transition planning for older children.⁸⁴ In 2020, a federal judge found that ICE frequently failed to consider alternative housing options for children who aged out of ORR custody.⁸⁵

U.S. Citizenship and Immigration Services

As noted, U.S. Citizenship and Immigration Services (USCIS) is responsible for the initial adjudication of asylum applications filed by unaccompanied children.⁸⁶ If either CBP or ICE determines that an apprehended child is a UAC and transfers him/her to ORR custody, USCIS generally will take jurisdiction over any asylum application, even where evidence shows that the child reunited with a parent or legal guardian after CBP or ICE made the UAC determination. USCIS also has initial jurisdiction over asylum applications filed by UAC with pending claims in immigration court, with cases on appeal before the Board of Immigration Appeals, or with petitions under review with federal courts. UAC must appear at any hearings scheduled in immigration court, even after petitioning for asylum with USCIS.⁸⁷

Executive Office for Immigration Review

The Executive Office for Immigration Review (EOIR) conducts removal proceedings and adjudicates immigration cases.⁸⁸ An immigration removal proceeding allows the foreign national and the U.S. government to present testimony so an immigration judge can determine whether the foreign national is removable or qualifies for some form of relief from removal (i.e., permission to remain in the United States either temporarily or permanently). The TVPRA requires that HHS ensure, “to the greatest extent practicable,” that UAC have access to legal counsel. It also authorizes HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied children.⁸⁹

EOIR’s policies for conducting UAC removal hearings are intended to ensure that children understand the nature of the proceedings, effectively present evidence about their cases, and have appropriate assistance. The policy guidelines discuss possible adjustments to create “an

⁸³ See, for example, John Burnett, “Migrant Youth Go From A Children’s Shelter To Adult Detention On Their 18th Birthday,” *NPR*, February 22, 2019; and Emily Stewart, “Immigrant children can be detained, prosecuted, and deported once they turn 18,” *Vox*, June 21, 2018.

⁸⁴ U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies, *Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Bill, 2020*, report to accompany H.R. 2740, 116th Cong., 1st sess., H.Rept. 116-62, May 15, 2019, p. 147 (hereinafter, “H.Rept. 116-62”). The committee cited reports that approximately two-thirds of unaccompanied children turning 18 years old while in the care and custody of ORR are transferred directly to ICE custody.

⁸⁵ Suzanne Monyak, “DC Judge Knocks ICE For Detaining Teens, Altering Evidence,” *Law360*, July 2, 2020. The ICE policies are the subject of ongoing litigation. See Grace Dixon, “Judge Urged To OK Plan To End ICE Teen Detention,” *Law360*, June 14, 2021.

⁸⁶ For information on asylum, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

⁸⁷ For background information on the UAC asylum process, see archived CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*.

⁸⁸ For more information on immigration courts, see U.S. Department of Justice, Executive Office for Immigration Review, “Executive Office for Immigration Review: An Agency Guide,” December 2017.

⁸⁹ TVPRA (P.L. 110-457), Section 235(b).

atmosphere in which the child is better able to participate more fully in the proceedings.” Under these guidelines, immigration judges should

- establish special dockets for UAC that are separate 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;
- employ child-sensitive questioning; and
- encourage the use of pro bono legal counsel if the child is not represented.⁹⁰

On July 9, 2014, in response to a UAC surge, EOIR issued new guidelines that prioritized cases involving unaccompanied children and non-detained families above other cases in the immigration courts and placed these cases on the same level as those of detained foreign nationals.⁹¹ EOIR has since revised these priorities three times. Its most recent guidance, issued January 17, 2018, does not prioritize UAC cases.⁹²

Table I. UAC Initial Case Completion by Outcome and Legal Representation
(FY2018, FY2019, FY2020 and first half of FY2021)

Outcome	Cases With Legal Representation		Cases Without Legal Representation		Total Cases	
	Cases	% of Total	Cases	% of Total	Cases	% of Total
Removal	8,267	37%	17,371	90%	25,638	61%
Termination	9,968	44%	1,163	6%	11,131	27%
Voluntary Departure	2,789	12%	769	4%	3,558	8%
Relief Granted	1,473	6%	13	<1%	1,486	4%

⁹⁰ U.S. Department of Justice, Executive Office for Immigration Review, Operating Policies and Procedures Memorandum 17-03: *Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children*, MaryBeth Keller, Chief Immigration Judge, December 20, 2017. This memorandum updates OPPM 07-01 from May 22, 2007.

⁹¹ EOIR’s priorities were (1) unaccompanied child; (2) adults with a child or children detained; (3) adults with a child or children released on alternatives to detention; and (4) recently detained border crossers. See statement of Juan P. Osuna, Director of Executive Office of Immigration Review, U.S. Department of Justice, *The President’s Emergency Supplemental Request for Unaccompanied Children and Related Matters*, in U.S. Congress, Senate Committee on Appropriations, hearings, 113th Cong., 2nd sess., July 10, 2014. Some subsequently criticized these policies for rushing the adjudication process. See, for example, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration and Border Security, *Oversight of the Executive Office for Immigration Review*, statement of Ranking Member Zoe Lofgren, hearing, 114th Cong., 1st sess., December 3, 2015, transcript serial no. 114-57, pp. 34-35.

⁹² EOIR’s priorities for case completion include (1) all cases involving individuals in detention or custody; (2) cases subject to a statutory or regulatory deadline; (3) cases subject to a federal court-ordered deadline; and (4) cases otherwise subject to an established benchmark for completion. As such, UAC are not included in these categories. Additional priorities are outlined in Appendix A of the 2018 guidance. See U.S. Department of Justice, Executive Office for Immigration Review, memorandum from James R. McHenry III, Director, *Case Priorities and Immigration Court Performance Measures*, January 17, 2018.

Outcome	Cases With Legal Representation		Cases Without Legal Representation		Total Cases	
	Cases	% of Total	Cases	% of Total	Cases	% of Total
Other	117	<1%	10	<1%	127	<1%
Total	22,614	100%	19,326	100%	41,940	100%

Source: Executive Office for Immigration Review, unpublished data provided to CRS, June 10, 2021.

Notes: Figures may not sum to totals presented because of rounding.

CRS reviewed recent EOIR data covering October 1, 2017, through March 31, 2021 (**Table 1**). Over this 42-month period, EOIR received 72,558 new UAC cases and completed 41,940 cases.⁹³ Of the total completed cases, 25,638 (61%) resulted in removal orders, of which 19,235 (75%) were issued in absentia, meaning that the UAC had not shown up to the hearing.⁹⁴ Of the completed cases that did not result in a removal order, 11,131 (27%) were terminated,⁹⁵ 3,558 (8%) resulted in voluntary departure,⁹⁶ and 127 (<1%) resulted in other outcomes.⁹⁷ In 1,486 cases (4% of completed cases in this period), children received some form of immigration relief. Typical forms of immigration relief for UAC include asylum, special immigrant juvenile (SIJ) status for abused, neglected, or abandoned children who are declared dependent by state juvenile courts,⁹⁸ and T nonimmigrant status for victims of trafficking.⁹⁹

Outcomes varied considerably depending upon whether children received legal representation. Of the 22,614 children *with* legal representation, 37% (8,267) were ordered removed; of those, 40% (3,322) were removed in absentia, and 7% (1,473) received some form of immigration relief. In contrast, of the 19,326 children *without* legal representation, 90% (17,371) were ordered removed; of those, 92% (19,235) were removed in absentia; and very few children (10) received some form of immigration relief.

Administration and Congressional Action

The Obama, Trump, and Biden Administrations, as well as Congress, have taken action since 2014 to respond to the increased levels of UAC apprehensions. During 2014, when UAC apprehensions reached a record at the time, the Obama Administration developed a working group to coordinate efforts of the federal agencies involved in responding to the issue. The Obama Administration also temporarily opened additional shelters and holding facilities to accommodate the large number of UAC apprehended at the border, initiated programs to address

⁹³ Executive Office for Immigration Review, Office of Legislative Affairs, email correspondence with CRS, July 12, 2021. EOIR may have received the cases prior to FY2018 that it completed during this period. Case receipts are based on initial filing date, and some children may have aged out of status during this time.

⁹⁴ In absentia statistics are not shown in **Table 1** but were provided by EOIR at CRS's request.

⁹⁵ Termination refers to a decision by an immigration judge to dismiss the case associated with a particular charging document. The conventional charging document given to a UAC who is put into removal proceedings is the *Notice to Appear*. If such a case is terminated, the child is not subject to removal related to the dismissed charging document. If DHS chooses to subsequently pursue the case, it must issue a new charging document.

⁹⁶ A UAC may elect to leave the United States voluntarily at any point during his or her removal proceedings. For more information on voluntary departure, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

⁹⁷ EOIR describes other outcomes as “administrative closure for reasons other than prosecutorial discretion, by joint motion, or otherwise in accordance with applicable precedent decisions of the Board of Immigration Appeals (BIA).”

⁹⁸ For more information, see CRS Report R43703, *Special Immigrant Juveniles: In Brief*.

⁹⁹ For more information, see CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

root causes of child migration from Central America to the United States, and requested funding from Congress to support ORR's increased caseload from the FY2014 surge.

The Trump Administration, also facing high levels of UAC and family unit apprehensions, took steps to provide housing for unaccompanied minors while also attempting to reduce both the flow of all migrants illegally crossing the Southwest border¹⁰⁰ and the number of families who filed what Administration officials perceived were meritless asylum claims solely to gain U.S. entry.¹⁰¹ The Administration also implemented a biometric and biographic information-sharing agreement between ORR and DHS that was intended to ensure greater child safety and immigration enforcement.

The Biden Administration, facing a new UAC surge, has excepted unaccompanied children from Title 42 expulsions, revoked the biometric/biographic information-sharing agreement between ORR and DHS, deployed FEMA to assist other federal agencies, and substantially increased the use of large temporary facilities to process unaccompanied children.

Obama Administration Action

In response to the surge of UAC apprehensions, the Obama Administration in June 2014 announced the formation of a Unified Coordination Group headed by the Administrator of the Federal Emergency Management Agency (FEMA), with representatives from key agencies.¹⁰² The FEMA administrator's role was to "lead and coordinate Federal response efforts to ensure that Federal agency authorities and the resources granted to the departments and agencies under Federal law ... are unified in providing humanitarian relief to the affected children, including housing, care, medical treatment, and transportation."¹⁰³

From the outset of the 2014 surge, CBP maintained primary responsibility for border security operations at and between POEs and, working with ICE, provided for the care of unaccompanied children in temporary DHS custody.¹⁰⁴ DHS coordinated 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 migrant-sending countries to undertake reforms to address the causes behind the recent flows.¹⁰⁵

To manage the UAC influx, ORR relied upon its network of shelters operated by nonprofit organizations with experience providing UAC-oriented services (e.g., medical care, education). HHS also coordinated with the Department of Defense (DOD), which temporarily made facilities

¹⁰⁰ For a comprehensive summary of major immigration enforcement efforts under the Trump Administration, see Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, Migration Policy Institute, July 2020.

¹⁰¹ See, for example, The White House, "President Donald J. Trump Is Working to Stop the Abuse of Our Asylum System and Address the Root Causes of the Border Crisis," fact sheet, April 29, 2019, and "Our Nation's Weak Asylum Laws are Encouraging an Overwhelming Increase in Illegal Immigration," fact sheet, November 1, 2018.

¹⁰² U.S. Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014; and The White House, Office of the Press Secretary, *Presidential Memorandum—Response to the Influx of Unaccompanied Alien Children Across the Southwest Border*, June 2, 2014.

¹⁰³ *Ibid.*

¹⁰⁴ As one of its missions, ICE works to dismantle organizations that smuggle UAC into the United States.

¹⁰⁵ U.S. Department of Homeland Security, "Statement by Secretary Johnson on Increased Influx of Unaccompanied Immigrant Children at the Border," press release, June 2, 2014.

available for UAC shelter at Lackland Air Force Base, Texas, Naval Base Ventura County, California, and Fort Sill, Oklahoma. Arrangements to house UAC at all three sites ended August 2014.¹⁰⁶ Subsequently, two other DOD locations, Holloman Air Force Base, New Mexico and Fort Bliss, Texas, were used to shelter UAC in early 2016 and in late 2016-early 2017, respectively.¹⁰⁷

In FY2014, DOJ's Legal Orientation Program, tasked with providing legal orientation presentations to sponsors of unaccompanied children in EOIR removal proceedings, served over 12,000 custodians for children released from ORR custody.¹⁰⁸ To provide children entering the immigration court system with legal representation during removal proceedings, EOIR partnered with the Corporation for National and Community Service (CNCS), a federal agency that administers AmeriCorps.¹⁰⁹ Together they created "Justice AmeriCorps" in 2015, a grant program that enrolled approximately 100 lawyers and paralegals as AmeriCorps members.¹¹⁰

In June 2014, DHS initiated a program to work with the Central American countries on a public education campaign to dissuade UAC from attempting to migrate illegally to the United States.¹¹¹ Additional Administration initiatives include collaborating with Central American governments to combat gang violence, strengthening citizen security, spurring economic development, and supporting the reintegration and repatriation of returned citizens.¹¹²

In September 2014, the Obama Administration announced a new Central American Minors (CAM) Refugee and Parole Program to provide a safe, legal, and orderly alternative to U.S. migration for unaccompanied children to join relatives in the United States.¹¹³ The program, targeting children from El Salvador, Guatemala, and Honduras, was meant to discourage them from migrating to the United States, by enabling at least some of them to be considered for refugee status while at home. (In August 2017, the Trump Administration terminated the CAM program. The Biden Administration has since reactivated the program and expanded its eligibility criteria.¹¹⁴)

¹⁰⁶ David Rogers, "Kid shelters at military posts to close," *Politico*, August 4, 2014.

¹⁰⁷ See archived CRS Insight IN10937, *History of Use of U.S. Military Bases to House Immigrants and Refugees*.

¹⁰⁸ In 2010, DOJ's Office of Legal Access Programs established the Legal Orientation Program for Custodians of Unaccompanied Children (LOPC). The program's goals are "to inform the children's custodians of their responsibilities in ensuring the child's appearance at all immigration proceedings, as well as protecting the child from mistreatment, exploitation, and trafficking, as provided under the Trafficking Victims Protection Reauthorization Act of 2008." The LOPC, a collaboration between EOIR, ORR, and nongovernmental partners, operates a national call center that provides scheduling assistance and basic legal information to UAC custodians.

¹⁰⁹ For more information on the CNCS and AmeriCorps, see CRS Report RL33931, *The Corporation for National and Community Service: Overview of Programs and Funding*.

¹¹⁰ 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. The Justice AmeriCorps program was administered from January 1, 2015, to August 31, 2017.

¹¹¹ The White House, Office of the Press Secretary, "Fact Sheet: Unaccompanied Children from Central America," June 20, 2014.

¹¹² *Ibid.*

¹¹³ For background information on the CAM program, see archived CRS Report R44020, *In-Country Refugee Processing: In Brief*.

¹¹⁴ For more information on the termination of the program and the current status of certain cases still affected, see U.S. Citizenship and Immigration Services, "In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador and Guatemala (Central American Minors—CAM)," <https://www.uscis.gov/CAM>.

Trump Administration Action

Actions by the Trump Administration regarding unaccompanied children largely emphasized efforts to provide temporary housing for unaccompanied children as well as reduce the number of adults migrating to the United States with children as “family units.”¹¹⁵ They included increasing the use of temporary influx shelters in response to an increasing UAC caseload; sharing more sponsor information between ORR, CBP, and ICE; reclassifying children whose parents were prosecuted for illegal entry as UAC and housing them in ORR shelters; and proposing new regulations to expand the amount of time children can spend in detention beyond the existing 20-day limit.

Increasing UAC Shelter Capacity

To respond to surges of unaccompanied children arriving at the Southwest border alone or as part of family units who were subsequently separated, ORR employed temporary “influx care facilities”¹¹⁶ to supplement its existing network of state-licensed shelters. (For a current list of temporary facilities, see **Table 2.**) These facilities are considerably larger than most standard ORR-supervised shelters and are typically located on federally owned land or leased properties, thereby exempting them from state or local childcare licensing standards. Between March 2018 and July 2019, ORR temporarily opened three such shelters, in Tornillo, TX (Tornillo shelter), Homestead, FL (Homestead shelter), and Carrizo Springs, TX, and then closed them when they were no longer needed.

At the end of December 2018, ORR was housing more than 14,000 children in all of its shelters (including influx shelters), an increase from a reported 9,200 children in January 2017.¹¹⁷ In December 2018, in response to the growing number of UAC in ORR custody, as well as a reported request from shelter operator BCFS Health and Human Services,¹¹⁸ the Trump Administration relaxed the requirements of its information collection and sharing policy with regard to potential UAC sponsors. (See “Information Sharing between ORR, ICE, and CBP” below). According to one news report, the number of children housed in all ORR-supervised shelters subsequently dropped from about 14,700 in December to 11,500 by mid-January 2019.¹¹⁹

Tornillo Shelter, Texas

Located 35 miles southeast of El Paso on the Mexico border, the Tornillo shelter operated from June 2018 until January 2019. It was run by a private firm, BCFS Health and Human Services (Emergency Management Division), a company known for providing emergency services

¹¹⁵ For an overview of apprehension trends during the Trump Administration, see CRS Report R46012, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border*.

¹¹⁶ ORR defines “influx care facility” as “a type of care provider facility that is opened to provide temporary emergency shelter and services for unaccompanied alien children during an influx or emergency.” *ORR Guide*, Guide to Terms.

¹¹⁷ Arelis R. Hernández, “Trump administration is holding record number of migrant youths,” *Washington Post*, December 21, 2018; and Andres Leighton, “Nearly 15,000 migrant children in federal custody jammed into crowded shelters,” *CNBC*, December 19, 2018.

¹¹⁸ Robert Moore, “Tent City Operator’s Request for Policy Shift Could Reduce the Mass Detention of Migrant Children,” *Texas Monthly*, December 15, 2018. Note that BCFS is not an acronym.

¹¹⁹ Miriam Jordan, “Trump Administration to Nearly Double Size of Detention Center for Migrant Teenagers,” *New York Times*, January 15, 2019.

following major disasters like Hurricane Katrina.¹²⁰ Even though some reported that Tornillo was opened in response to the demand for UAC shelter space prompted by the Trump Administration's zero tolerance policy,¹²¹ HHS clarified that children separated as the result of recent border enforcement actions were specifically not sheltered at the Tornillo shelter.¹²² Rather, older children were transferred to Tornillo just prior to their expected release to sponsors.¹²³

Homestead Shelter, Florida

Located in Florida about 30 miles south of Miami, the Homestead Shelter (Homestead) was the largest UAC facility operating in the United States and the only one operated by a for-profit corporation, Comprehensive Health Services Incorporated (CHSI), a subsidiary of Caliburn International Corporation.¹²⁴ Like the Tornillo shelter, it was located on federal land.¹²⁵

HHS began using Homestead as a temporary shelter for unaccompanied children in June 2016 and sheltered approximately 8,500 children over approximately 10 months until it closed temporarily in April 2017.¹²⁶ In March 2018, the Homestead shelter reopened.¹²⁷ In February 2019, it reportedly added 1,000 beds in response to the closing of the Tornillo shelter.¹²⁸ From March 2018 to February 26, 2019, the shelter housed more than 6,300 unaccompanied children and oversaw 4,850 sponsor placements. As of February 26, 2019, Homestead was housing about 1,600 children who had spent an average of 58 days in the shelter.¹²⁹ On August 3, 2019, ORR announced that the Homestead shelter had been closed and that all children in it had been placed with sponsors or relocated to the network of state-licensed UAC shelters.¹³⁰

¹²⁰ Several news articles described Tornillo's infrastructure and living conditions in detail. See for example, Tanvi Misra, "CityLab Daily: The Life and Death of an American Tent City," *Citylab*, January 15, 2019.

¹²¹ See for example, Arelis R. Hernández, "Inside a gigantic U.S. tent shelter for migrant teens," *Washington Post*, October 12, 2018. For more information on the zero tolerance policy, see CRS Report R45266, *The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy*.

¹²² U.S. Department of Health and Human Services, "Unaccompanied Alien Children sheltered at Tornillo LPOE, Tornillo, Texas," Fact Sheet, updated December 26, 2018.

¹²³ Caitlin Dickerson, "Migrant Children Moved Under Cover of Darkness to a Texas Tent City," *New York Times*, September 30, 2018.

¹²⁴ For information about ORR's contract with CHSI, see U.S. Department of Health and Human Services, Office of the Inspector General, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance with Federal Requirements*, A-12-20-20001, December 2020.

¹²⁵ John Burnett, "Inside The Largest And Most Controversial Shelter For Migrant Children In The U.S.," *NPR*, February 13, 2019.

¹²⁶ *Miami Herald*, February 8, 2019. The article does not specify the date when the shelter reached full capacity.

¹²⁷ Several news reports suggest that Homestead was reopened without public notice. See for example, Jerry Iannelli, "Five Awful Stories About Miami's Child-Migrant Compound," *Miami New Times*, November 4, 2018. HHS maintains that it notified state and local community leaders about the reactivation of the Homestead site in the month prior to its opening. See U.S. Department of Health and Human Services, Administration for Children and Families, "Unaccompanied Alien Children Job Corps Site, Homestead, Florida," *Fact Sheet*, February 26, 2019 (hereinafter, "ACF Fact Sheet").

¹²⁸ *Miami Herald*, February 8, 2019; and Miriam Jordan, "Trump Administration to Nearly Double Size of Detention Center for Migrant Teenagers," *New York Times*, January 15, 2019.

¹²⁹ ACF Fact Sheet, February 26, 2019.

¹³⁰ Alex Daugherty and Monique O. Madan, "Homestead detention center will shut down, but will cost millions to run empty till the end," *Miami Herald*, October 28, 2019.

During its operation, Homestead was the subject of controversy. Media reports revealed that several cases of sexual abuse allegedly occurred at the facility.¹³¹ Children reportedly faced an environment that some characterized as emotional neglect and abuse. In addition, the facility was located near a toxic military Superfund site.¹³² These issues reportedly influenced the Biden Administration not to reopen Homestead in the spring of 2021 despite the urgent need for additional housing.¹³³

Carrizo Springs, Texas

Located about 120 miles southwest of San Antonio, Texas, the Carrizo Springs influx shelter was first opened to children on June 30, 2019, with a potential capacity of 1,300 children. The facility, sited on government-leased land, once housed oil field workers and was operated by BCFS, the same privately run nonprofit organization that operated the Tornillo facility (described above).¹³⁴ Carrizo Springs was closed less than a month after it opened.¹³⁵

Influx Shelters on U.S. Military Installations

As it did during the Obama Administration, HHS coordinated with DOD to discuss and possibly open temporary influx shelter facilities on U.S. military installations. Based on anticipated increases of UAC referrals, HHS reactivated a temporary emergency influx shelter at Fort Sill Army Base near Lawton, OK, about 80 miles southwest of Oklahoma City. The facility could have housed approximately 1,400 children but remained shuttered during the Trump Administration.¹³⁶

Shelters in Border Hotels

Several media reports have described how some children were housed in hotels while awaiting their expulsions under Title 42.¹³⁷ The housing, arranged by ICE through MVM Inc., a private contractor, reportedly began in April 2020 and involved hundreds and possibly thousands of UAC in at least a half dozen locations.¹³⁸ Child advocates raised concerns that such arrangements, which also occurred under previous administrations, violated the TVPRA because the hotels were

¹³¹ Monique O. Madan, “Sex abuse claims revealed at Homestead shelter, where staff was not vetted for child abuse,” *Miami Herald*, July 15, 2020.

¹³² See, for example, Alexi C. Cardona, “Recapping the Five Biggest Controversies at the Homestead Migrant Children’s Camp,” *Miami New Times*, February 26, 2021.

¹³³ See Stef W. Kight and Hans Nichols, “Biden opposes reopening controversial child migrant shelter,” *Axios*, March 16, 2021.

¹³⁴ U.S. Department of Health and Human Services, Administration for Children and Families, “Unaccompanied Alien Children Sheltered at Carrizo Springs Site, Carrizo Springs, Texas,” press release, July 22, 2019.

¹³⁵ See Alicia A. Caldwell, “New Shelter for Migrant Teenagers Lacks Residents,” *Wall Street Journal*, July 11, 2019; and James Barragán, “Last group of migrant children to leave Carrizo Springs facility today—less than 1 month after it opened,” *The Dallas Morning News*, July 25, 2019.

¹³⁶ Ken Miller, “Plan halted to house migrant kids at Oklahoma’s Fort Sill,” *Army Times*, July 28, 2019; and U.S. Department of Health and Human Services, Administration for Children Youth, and Families, Legislative Affairs, email correspondence to CRS, June 13, 2019.

¹³⁷ Daniel Gonzalez, “124 immigrant children held in 3 Phoenix hotels under Trump policy, court records show,” *Arizona Republic*, September 23, 2020; “Migrant children held in hotels with “no security” or protection from COVID-19, civil rights advocate says,” *CBS News*, July 23, 2020;

¹³⁸ Caitlin Dickerson, “A Private Security Company Is Detaining Migrant Children at Hotels,” *New York Times*, October 21, 2020.

not sufficiently monitored, employed workers who were not licensed to provide childcare, and children's parents or lawyers did not know their whereabouts. Some children were reportedly kept in hotels for weeks prior to their expulsion.¹³⁹ DHS officials maintain that hotels had housed UAC several times during the past decade, and that using them protected the public and others from the spread of COVID-19 at standard ORR shelters.¹⁴⁰ Judge Dolly Gee, who oversees the Flores Agreement, required DHS to end the practice by September 28, 2020.¹⁴¹

Concerns about ORR Temporary Shelters

ORR maintains that its temporary shelters possess similar standards, policies, and services found at conventional ORR-supervised state-licensed shelters.¹⁴² However, child welfare advocates have long expressed concerns about the temporary facilities' large sizes, remote locations,¹⁴³ durations of stay,¹⁴⁴ and processes for transferring children to the facilities.¹⁴⁵ In November 2018, HHS's OIG issued a memorandum in which it identified significant vulnerabilities regarding insufficient personnel background checks and numbers of mental health clinicians at Tornillo.¹⁴⁶ The following month, HHS responded to the OIG describing actions taken in response to the report's findings.¹⁴⁷ In February 2019, a congressional delegation visiting the Homestead site characterized its conditions as inhumane and unsuitable for children.¹⁴⁸ Other immigration observers refuted that characterization.¹⁴⁹

In February 2019, an internal ORR report indicated that the agency had received 4,556 allegations of sexual abuse or sexual harassment between FY2015 and FY2018, the more serious of which

¹³⁹ Daniel Gonzalez, "ICE contractor still holding migrant children in Arizona hotels, acting DHS secretary says," *Arizona Republic*, August 7, 2020.

¹⁴⁰ Testimony of Chad Wolf, Acting Secretary of Homeland Security, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Homeland Security Secretary Confirmation Hearing*, 116th Cong., 2nd sess., September 23, 2020.

¹⁴¹ Nomann Merchant, "Judge orders US to stop detaining migrant children in hotels." *AP News*, September 4, 2020.

¹⁴² *ORR Guide*, Section 7.

¹⁴³ Muzaffar Chishti and Faye Hipsman, "Unaccompanied Minors Crisis Has Receded from Headlines But Major Issues Remain," *Migration Information Source*, Migration Policy Institute, September 25, 2014.

¹⁴⁴ According to one news report, unaccompanied children spent an average of 25 days in the Tornillo shelter out of an average 59 total days in HHS custody. See Carmen Sesin, "'Difficult to watch': House Democrats tour housing for migrant children," *NBC News*, February 19, 2019.

¹⁴⁵ See, for example, Joshua Barajas and Amna Nawaz, "The Tornillo shelter for migrant children was supposed to close after 30 days. Here's why it's still open," *PBS News*, November 28, 2018; and Caitlin Dickerson, "Migrant Children Moved Under Cover of Darkness to a Texas Tent City," *New York Times*, September 30, 2018.

¹⁴⁶ U.S. Department of Health and Human Services, Office of Inspector General, *Memorandum: The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff (A-12-19-20000)*, November 27, 2018. See also U.S. Department of Health and Human Services, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431, September 2019.

¹⁴⁷ Letter from Lynn A. Johnson, Assistant Secretary, U.S. Department of Health and Human Services, Administration for Children and Families, to Amy J. Frontz, Assistant Inspector General for Audit Services, U.S. Department of Health and Human Services, December 21, 2018.

¹⁴⁸ See, for example, Carmen Sesin, "'Difficult to watch': House Democrats tour housing for migrant children," *NBC News*, February 19, 2019; and Angelina Chaplin, "Florida Detention Center Expands, Packing In Migrant Children 'Like Sardines'," *Huffington Post*, February 12, 2019.

¹⁴⁹ See, for example, Preston Huennkens, "Is the Homestead UAC Shelter Actually a Prison?" Center for Migration Studies, March 6, 2019.

(1,303) were reported to DOJ.¹⁵⁰ Further investigations revealed shortcomings with ORR's system for reporting such incidents within its shelter network.¹⁵¹

ORR Sponsor Background Checks and Post-Placement Procedures

Sizable increases in UAC referrals since FY2008 have challenged ORR to meet the demand for its services while maintaining related child welfare protocols and administrative standards.¹⁵² These challenges attracted public attention in January 2016 when a Senate investigation found that some UAC sponsored by distant relatives and legal guardians were forced to work in oppressive conditions on an Ohio farm in 2014. The related Senate report outlined a range of what it characterized as serious deficiencies related to the safe placement of children with distant relatives and unrelated adults as well as post-placement follow-up.¹⁵³ During the Senate Homeland Security and Governmental Affairs Committee hearing that followed, HHS officials acknowledged limitations of their screening and post-placement follow-up procedures for such sponsors. They also contended that HHS's liability terminates once custody of an unaccompanied minor is relinquished to a sponsor.¹⁵⁴ News reports indicate that DHS and HHS agreed to establish new guidelines within a year to prevent episodes such as the farm-related labor trafficking incident from reoccurring, an outcome that remained unfulfilled as of 2018.¹⁵⁵

In April 2018, during a Senate Homeland Security Committee hearing, an HHS official testified that ORR was unable to account for 1,475 of the 7,635 unaccompanied children placed with sponsors between October and December of 2017.¹⁵⁶ According to HHS, ORR began voluntarily conducting post-placement outreach as a "30-day checkup" to ensure that children and their sponsors did not require additional services even though HHS maintained that it had no legal responsibility to locate UAC after placement with sponsors. Some observers suggested that many

¹⁵⁰ Office of Refugee Resettlement, "NadUAC1213 Sexual Assaults by Date of Incident," undated. See also Matt hew Haag, "Thousands of Immigrant Children Said They Were Sexually Abused in U.S. Detention Centers, Report Says," *New York Times*, February 27, 2019.

¹⁵¹ U.S. Department of Health and Human Services, Office of Inspector General, *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody*, OEI-09-18-00430, June 2020.

¹⁵² The GAO raised concerns about ORR's lack of planning for its capacity needs, inconsistent monitoring of service provision by its nonprofit grantee organizations that provide shelter services, limited contact with children following their placement, and unreliable and unsystematic administrative recording of post-placement follow-up procedures. See U.S. Government Accountability Office (GAO), *Unaccompanied Children: HHS Can Take Further Actions to Monitor Their Care*, GAO-16-180, February 2016; and U.S. Government Accountability Office (GAO), *DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed*, GAO-18-506T, April 26, 2018. Similar concerns have been raised by Congress. See U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of the Care of Unaccompanied Alien Children*, Staff Report, 115th Cong., 2nd sess., August 13, 2018.

¹⁵³ United States Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, staff report, undated.

¹⁵⁴ U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Adequacy of the Department of Health and Human Services' Efforts to Protect Unaccompanied Alien Children From Human Trafficking*, hearing, 114th Cong., 2nd sess., January 28, 2016.

¹⁵⁵ U.S. Government Accountability Office (GAO), *DHS and HHS Have Taken Steps to Improve Transfers and Monitoring of Care, but Actions Still Needed*, GAO-18-506T, April 26, 2018.

¹⁵⁶ Testimony of Steven Wagner, Acting Assistant Secretary, Administration for Children and Families, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human Trafficking and Abuse*, 115th Cong., 2nd sess., April 26, 2018.

nonresponsive sponsors may be residing in the United States illegally and may be reluctant to respond to official post-placement outreach.¹⁵⁷ A 2016 HHS OIG report found a similar proportion of UAC unaccounted for, post-placement.¹⁵⁸

Information Sharing between ORR, ICE, and CBP

As noted, ORR tries to find sponsors, typically family members, for UAC to live with while they await their removal proceedings. For years, immigration enforcement advocates and some Members of Congress decried that an indeterminate but sizeable proportion of UAC sponsors were unauthorized aliens, and that ORR neither collected, nor shared with DHS, information on sponsors' legal status. Immigration advocates contended that such information sharing mandates would discourage the sponsorship of unaccompanied children.

In April 2018, ORR, ICE, and CBP entered into a memorandum of agreement (MOA) providing for the sharing of information from the time that UAC are referred by either CBP or ICE to ORR, through their time in ORR custody, and upon their release from ORR custody to a sponsor.¹⁵⁹ Under the MOA, ORR agreed to collect and share with ICE and CBP information about unaccompanied children in their custody, such as, their arrests, unauthorized absences, deaths, abuse experienced, and violent behavior, as well as age determination findings and gang affiliation information. The MOA also mandated the sharing of information about potential sponsors and all adults living with them. Such information included citizenship, immigration status, criminal history, and immigration history.

According to the agreement, ORR would share with ICE this information as well as biographic and biometric (fingerprint) information about potential sponsors and their household members. In return, ICE would provide ORR with the summary criminal and immigration histories of the potential sponsors and all adult members of their households so that ORR could make more complete suitability determinations regarding the UAC sponsors.

The Trump Administration and immigration enforcement advocates described the policy as necessary to ensure the safety and well-being of children placed with sponsors.¹⁶⁰ Immigrant advocates contended that the new policy would increase the number of children that remain in federal custody while they seek immigration relief, increase detention costs, and extend family separation.¹⁶¹ They also questioned the relevance of an adult's immigration status to a child's safe placement with a sponsor.¹⁶²

¹⁵⁷ Amy Harmon, "Did the Trump Administration Separate Immigrant Children From Parents and Lose Them?" *New York Times*, May 28, 2018.

¹⁵⁸ U.S. Department of Health and Human Services, Office of Inspector General, *HHS's Office of Refugee Resettlement Improved Coordination and Outreach to Promote the Safety and Well-Being of Unaccompanied Alien Children*, OEI-09-16-00260, July 2017.

¹⁵⁹ Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services, and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters, April 13, 2018.

¹⁶⁰ See, for example, Andrew R. Arthur, "The Worst Provision in the Funding Bill: Think about the children," Center for Immigration Studies, February 16, 2019.

¹⁶¹ See, for example, Melissa Hastings et al., "The ORR and DHS Information-Sharing Agreement and its Consequences," Justice for Immigrants, January 2019. Child welfare advocates have expressed grave concerns on how family separation impacts children. See, for example, American Academy of Pediatrics, Letter from Colleen A. Kraft, President, to The Honorable Kirstjen M. Nielsen, U.S. Secretary of Homeland Security, March 1, 2018.

¹⁶² Tal Kopan, "ICE arrested undocumented adults who sought to take in immigrant children," *San Francisco*

After the policy was implemented, ICE began to arrest unauthorized aliens who came forward to sponsor unaccompanied children. From July through November 2018, ICE is reported to have arrested 170 potential sponsors—109 of whom had no previous criminal histories—and placed them in deportation proceedings.¹⁶³ Matthew Albence, a then-senior ICE official who testified before the Senate Homeland Security and Governmental Affairs Committee in September 2018, confirmed these activities and asserted that an estimated 80% of active UAC sponsors and family members living with them were residing in the country illegally.¹⁶⁴

Some have linked the new information-sharing agreement with increases in the average number of days unaccompanied children spend in ORR custody.¹⁶⁵ During FY2015 and FY2016, unaccompanied children spent an average of 34 and 38 days in ORR custody, respectively.¹⁶⁶ In FY2017, that average increased to 48 days. In FY2018, the figure increased to 60 days, and for the first three months of FY2019, it stood at 89 days¹⁶⁷ before declining to 55 days as of February 2020.¹⁶⁸ Other factors, such as the number of children that require shelter, may have affected the average time unaccompanied children were spending in ORR custody, making it difficult to attribute changes in average ORR custody time solely to the information-sharing MOA between ORR and DHS.

As noted above, the Administration in December 2018 relaxed some requirements of its information collection and sharing policy. It continued to require background checks for all members of the sponsor’s household over age 18, but limited the collection and sharing with DHS of fingerprint data to sponsors only, not other adults in the sponsor’s household.¹⁶⁹

Zero Tolerance Immigration Enforcement Policy

On May 7, 2018, DOJ implemented a “zero tolerance” enforcement policy for persons who entered the United States illegally between ports of entry. Under the zero tolerance policy, DOJ sought to prosecute all adult foreign nationals apprehended crossing the border illegally, without making exceptions for asylum seekers or migrants with minor children. Close to 3,000 children were initially reported to have been separated from accompanying parents and legal guardians as

Chronicle, December 10, 2018.

¹⁶³ *Ibid.*

¹⁶⁴ Testimony of Matthew Albence, executive associate director of Immigration and Customs Enforcement, U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives*, 115th Cong., 2nd sess., September 18, 2018.

¹⁶⁵ See Tanvi Misra, “CityLab Daily: The Life and Death of an American Tent City,” *Citylab*, January 15, 2019; and National Center for Youth Law, Center for Human Rights and Constitutional Law, and the University of California Davis School of Law Immigration Clinic, *The Flores Settlement Agreement & Unaccompanied Children in Federal Custody*, February 2019.

¹⁶⁶ Data on annual average days in ORR custody from FY2015-FY2018 provided to CRS by Office of Refugee Resettlement, Office of Legislative Affairs and Budget, February 12, 2019.

¹⁶⁷ See *Miami Herald*, February 8, 2019.

¹⁶⁸ U.S. Department of Health and Human Services, Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, fact sheet, April 1, 2020.

¹⁶⁹ U.S. Department of Health and Human Services, Administration for Children and Families, “Unaccompanied Alien Children Program,” Fact Sheet, December 2018. On March 12, 2021, DHS and HHS issued a joint statement announcing the termination of the 2018 agreement and the signing of a new Memorandum of Agreement “that promotes the safe and timely transfer of children” while maintaining child safeguards for vetting sponsors. See U.S. Department of Homeland Security, Office of Public Affairs, “HHS and DHS Joint Statement on Termination of 2018 Agreement,” press release, March 12, 2021.

the result of the zero tolerance policy.¹⁷⁰ DOJ's policy represented a change in the level of enforcement of an existing statute rather than a change in statute or regulation.¹⁷¹

Criminally prosecuting adults (regardless of nationality) makes them subject to detention in federal criminal adult detention facilities. Under the zero tolerance policy, when a parent entered the U.S. illegally with a minor and was detained in criminal detention, DHS treated the child as an unaccompanied alien child and transferred him or her to ORR custody. Once the parent's criminal prosecution for illegal entry or reentry ended and any sentence was served, the parent could be reunited with the child.

Following mostly critical public reaction, President Trump issued an executive order on June 20, 2018, mandating that DHS maintain custody of alien families during the pendency of any criminal trial or immigration proceedings.¹⁷² CBP subsequently stopped referring most illegal border crossers to DOJ for criminal prosecution. ICE continued, family detention space permitting, to detain family units for up to 20 days. A federal judge then issued an injunction prohibiting family separation and requiring that all separated children be promptly reunited with their families.¹⁷³

Reuniting families presented a considerable challenge to ORR, CBP, and ICE. Immigrant advocates criticized the Trump Administration's efforts at family reunification for what some described as an uncoordinated implementation process that lacked an effective plan to reunify separated families.¹⁷⁴ Reports subsequently issued by the OIG for both DHS and HHS indicated that CBP had omitted information about the separated children's family members after classifying them as unaccompanied alien children and referring them to ORR, and described limitations with its information technology system for tracking such children.¹⁷⁵ The resulting delay in reunifying families meant that two to three thousand additional children spent an indeterminate amount of additional time in ORR shelters.¹⁷⁶

¹⁷⁰ U.S. Department of Health and Human Services, "HHS Issues Statement on Ms. L, et al., Status Report Regarding Plan for Compliance for Remaining Class Members," press release, July 13, 2018. This figure was also reported in several news reports including Dan Diamond, "HHS says hundreds more migrant kids may have been separated than earlier count," *Politico*, July 5, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

¹⁷¹ Prior Administrations prosecuted illegal border crossings relatively infrequently. When they did engage in concerted efforts to crack down on this activity, they generally did not prosecute asylum seekers or families. Prior Administrations also separated arriving migrant parents from their accompanying children (and treated the minors as unaccompanied children) in more limited circumstances, specifically where the agency had concerns about the legitimacy of the family relationship or the safety of the child. *Ibid.*

¹⁷² Executive Order 13841, *Affording Congress an Opportunity to Address Family Separation*, 83 *Federal Register* 29435, June 25, 2018.

¹⁷³ See *Ms. L v. ICE*, case 3:18-cv-00428-DMS-MDD, Document 83, (S.D. Cal. June 26, 2018).

¹⁷⁴ See, for example, Kevin Sieff, "The chaotic effort to reunite immigrant parents with their separated kids," *Washington Post*, June 21, 2018; and Jonathan Blitzer, "The Government has no plan for reuniting the immigrant families it is tearing apart," *New Yorker*, June 18, 2018.

¹⁷⁵ U.S. Department of Homeland Security, Office of Inspector General, "Special Review—Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy," OIG-18-84, September 27, 2018; and U.S. Department of Health and Human Services, Office of Inspector General, "Separated Children Placed in Office of Refugee Resettlement Care," HHS-OIG Issue Brief, OEI-BL-18-00511, January 2019.

¹⁷⁶ See Ian Lovett and Louise Radnofsky, "Amid Chaos at Border, Some Immigrant Families Reunite," *Wall Street Journal*, June 24, 2018; Ritu Prasad, "Undocumented migrant families embark on chaotic reunion process," *BBC*, June 25, 2018; Kaitlyn Schallhorn, "What Trump's 'zero-tolerance' immigration policy means for children separated from families at border," *Fox News*, June 19, 2018; and Caitlin Dickerson, "Trump Administration in Chaotic Scramble to Reunify Migrant Families," *New York Times*, July 5, 2018.

In the period since the zero tolerance policy was effectively paused in June 2018, at least 1,000 additional children were separated, bringing the total reported number of separated children to between 5,300 and 5,500.¹⁷⁷

Regulations to Replace the Flores Settlement Agreement

On September 7, 2018, DHS and HHS jointly published proposed regulations on the apprehension, processing, care, and custody of alien children that would have replaced the Flores Agreement.¹⁷⁸ The proposed regulations mainly addressed detention for children within family units but also contain some provisions affecting unaccompanied children. While adhering to the basic purpose of the Flores Agreement “in ensuring that all juveniles in the government’s custody are treated with dignity, respect, and special concern for their particular vulnerability as minors,” the rule would have amended current licensing requirements for family residential centers to allow families to be detained together during the full length of their immigration proceedings. This rule would thereby have allowed ICE to overcome the 20-day immigration detention restriction for families that was imposed as part of the Flores Agreement. The final rule was issued on August 23, 2019.¹⁷⁹

Opponents of the proposed rule criticized it for potentially allowing children to be indefinitely detained with their parents in unsafe and inappropriate conditions.¹⁸⁰ Supporters contended that, in its current form, the Flores Agreement incentivizes unlawful migration to the United States and the filing of meritless asylum claims.¹⁸¹ Soon after the rule was issued, the federal judge overseeing the Flores Agreement permanently enjoined it.¹⁸²

Title 42 Public Health Emergency

As noted above, in March 2020 the CDC declared a public health emergency under Title 42 of the U.S. Code that allowed CBP to promptly expel unaccompanied children at the border without considering their asylum claims.¹⁸³ The use of Title 42 sharply reduced the number of unaccompanied children that CBP referred to ORR. In the first six months of FY2020, UAC apprehensions by CBP and CBP referrals to ORR totaled 18,096 and 13,339, respectively.¹⁸⁴ Following Title 42, those figures for the second half of FY2020 declined to 12,461, and 1,970,

¹⁷⁷ For more information, see CRS Report R45266, *The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy*.

¹⁷⁸ U.S. Department of Health and Human Services and U.S. Department of Homeland Security, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” 83 *Federal Register* 45486-45534, September 7, 2018.

¹⁷⁹ U.S. Department of Homeland Security and U.S. Department of Health and Human Services, “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,” 84 *Federal Register* 44392-44535, August 23, 2019.

¹⁸⁰ See, for example, Philip Wolgin, “The High Costs of the Proposed Flores Regulation,” Center for American Progress, October 19, 2018.

¹⁸¹ See, for example, Matthew Sussis, “The History of the Flores Settlement: How a 1997 agreement cracked open our detention laws,” Center for Immigration Studies, February 11, 2019.

¹⁸² See *Flores v. Barr*, case 2:85-cv-04544-DMG-AGR, Document 690, (C.D. Cal. September 27, 2019).

¹⁸³ For more information, see CRS Legal Sidebar LSB10582, *Asylum Processing at the Border: Legal Basics*.

¹⁸⁴ Source for apprehensions figure: U.S. Border Patrol, “Southwest Land Border Encounters,” <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters>. Source for referrals figure: U.S. Department of Health and Human Services, “Latest UC Data – FY2020,” <https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2020/index.html>. HHS presents only 30-day average referrals, which CRS multiplied by the number of days in each month and summed these products to produce the total.

respectively.¹⁸⁵ The declines occurred because UAC expulsions under Title 42 made up the large majority of enforcement actions, and expulsions preclude referrals to ORR.¹⁸⁶ In November 2020, a federal judge halted the use of Title 42 for UAC.¹⁸⁷ In January 2021, an appeals court stayed that injunction.¹⁸⁸

Mexican Immigration Policies

In November 2020, immediately following the U.S. election, the Mexican government passed a law limiting the extent to which minor children from other countries, accompanied or unaccompanied, could be detained in Mexico.¹⁸⁹ Previously, many children were detained in Mexico. In 2019, for example, the Mexican government reportedly detained more than 50,000 children, largely from Honduras and Guatemala.¹⁹⁰ In the first eight months of 2020, detained children in Mexico numbered roughly 7,500. Following passage of the November law, Mexican authorities released many previously detained children. What proportion may have migrated to the U.S. border and requested asylum is unknown.

Despite these legal changes, observers have noted the largely unheralded role of the Mexican government to reduce U.S.-bound migration by restricting and repatriating Northern Triangle migrants, including unaccompanied minors. Between 2015 and 2020, Mexican authorities reportedly repatriated between 50% and 90% of the almost 71,000 unaccompanied migrant children they took into custody.¹⁹¹

Biden Administration Action

Soon after taking office, the Biden Administration stopped expelling unaccompanied children under Title 42.¹⁹² That action and other circumstances have contributed to a record surge of unaccompanied children arriving at the Southwest border.¹⁹³

¹⁸⁵ Ibid.

¹⁸⁶ As a result of Title 42 and the COVID-19 pandemic, relatively fewer children from Northern Triangle countries migrated to the Southwest border in the second half of FY2020 compared to the first half. Consequently, Mexican unaccompanied children made up 35% of all UAC apprehensions in the first half of FY2020, but 64% in the second half. Since most Mexican UAC are not referred to ORR but are voluntarily returned, ORR referrals declined more significantly (85%) than apprehensions (32%) in the second half of FY2020.

¹⁸⁷ See Suzanne Monyak, “DC Judge Blocks Policy to Expel Migrant Kids from Border,” *Law360*, November 18, 2020; and *P.J.E.S. v. Chad F. Wolf*, case 1:20-cv-02245-EGS-GMH, Document 80, (U.S. District Court, Washington, D.C., November 18, 2020).

¹⁸⁸ See Alyssa Aquino, “DC Circ. Lifts Block On Migrant Children Expulsion Policy,” *Law360*, January 29, 2021; and *P.J.E.S. v. David Pekoske*, case 20-5357, Document 1882899, (U.S. Court of Appeals, Washington D.C., January 29, 2021).

¹⁸⁹ For more information on Mexico’s role in U.S. immigration enforcement more generally, see CRS In Focus IF10215, *Mexico’s Immigration Control Efforts*.

¹⁹⁰ Christopher Sherman, “Mexico to stop holding child migrants in detention centers,” *APNews*, November 12, 2020

¹⁹¹ Amnesty International, *Pushed Into Harm’s Way: Forced Returns of Unaccompanied Migrant Children to Danger by the USA and Mexico*, June 2021.

¹⁹² U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, “Notice of Temporary Exception From Expulsion of Unaccompanied Noncitizen Children Pending Forthcoming Public Health Determination,” 86 *Federal Register* 9942, February 17, 2021.

¹⁹³ See, for example, Nick Miroff and Maria Sacchetti, “Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent,” *Washington Post*, March 22, 2021; and Michael D. Shear, Zolan Kanno-Youngs and Eileen Sullivan, “Young Migrants Crowd Shelters, Posing Test for Biden,” *New York Times*, June 14, 2021.

ORR Shelter Capacity

The Biden Administration was confronted with limited ORR shelter capacity (described below), which resulted in CBP rapidly expanding its temporary housing capacity to accommodate arriving children, a situation that drew considerable media attention and criticism from child welfare advocates.¹⁹⁴ CBP operates Border Patrol stations as well as centralized processing centers that are intended to house migrants of all ages for at most a few hours and a few days, respectively.¹⁹⁵ At one point in March 2021, CBP was housing almost 5,800 unaccompanied children in its own facilities,¹⁹⁶ including more than 4,100 children at a Donna, TX, facility that was intended for 250.¹⁹⁷ More than 2,000 of these children had been held in CBP custody for more than 72 hours, and 39 children had been held for more than two weeks.¹⁹⁸

The reduced ORR housing capacity stemmed from both the declines in UAC referrals to the agency during FY2020, and CDC's public health protocols enacted in response to the COVID-19 pandemic. Because of sharply diminished numbers of UAC referrals in FY2020, some shelters either reduced capacity or did not renew their contracts upon expiration. In addition, the CDC protocols on COVID-19 required ORR shelters that were operating to reduce the number of children housed in order to comply with its social distancing guidelines.¹⁹⁹ Consequently, a smaller number of conventional shelters were operating at significantly reduced capacity at the start of FY2021—less than half the capacity required to accommodate demand for shelter space—hampering ORR's ability to respond to the UAC surge.²⁰⁰

In March 2021, CDC directed ORR to relax its COVID-19 related restrictions and accommodate unaccompanied children in its shelters at 100% capacity, despite potential health risks.²⁰¹ CDC justified rescinding the COVID-19 guidelines at ORR shelters as preferable to having children experience prolonged stays in CBP facilities.²⁰² Reportedly, many conventional shelters faced

¹⁹⁴ See, for example, Rosa Flores, Sara Weisfeldt and Catherine E. Shoichet, "Kids detained in overcrowded border facility are terrified, crying and worried, lawyers say," *CNN*, March 13, 2021; Zolan Kanno-Youngs and Michael D. Shear, "Biden Faces Challenge From Surge of Migrants at the Border," *New York Times*, March 8, 2021; and Hilary Andersson and Anne Laurant, "Children tell of neglect, filth and fear in US asylum camps," *BBC*, May 23, 2021. CBP faced similar criticisms during earlier surges. See, for example, Dara Lind, "The horrifying conditions facing kids in border detention, explained," *Vox*, June 25, 2019.

¹⁹⁵ For more information on CBP and ORR shelter types, see Danilo Zak, *Explainer: Emergency Shelters and Facilities Housing Unaccompanied Children*, National Immigration Forum, updated June 25, 2021.

¹⁹⁶ Mark Greenberg, "U.S. Government Makes significant Strides in Receiving Unaccompanied Children but Major Challenges Remain," Migration Policy Institute, May 2021.

¹⁹⁷ Elliot Spagat and Nomaan Merchant, "Over 4,000 migrants, many kids, crowded into Texas facility," *APNews*, March 31, 2021.

¹⁹⁸ *Ibid.* By the end of April 2021, the number of unaccompanied children in CBP facilities had dropped below 1,000. See Erin Coulehan, "Report: Number of unaccompanied migrant children at CBP facilities drops, daily apprehensions persist," *Border Report*, April 30, 2021. See also U.S. Customs and Border Protection, "CBP Announces June 2021 Operational Update," press release, July 16, 2021.

¹⁹⁹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *COVID-19 Infection Control Inventory and Planning (ICIP) Tool for Homeless Service Providers*, June 11, 2020. A review of ORR's protocols at its shelters indicated that they were generally prepared to respond to the COVID-19 pandemic. See U.S. Department of Health and Human Services, Office of the Inspector General, *Office of Refugee Resettlement Ensured That Selected Care Providers Were Prepared To Respond to the COVID-19 Pandemic*, Report No. A-04-20-02031, November 2020.

²⁰⁰ See, for example, Mark Greenberg, "Hampered by the Pandemic: Unaccompanied Child Arrivals Increase as Earlier Preparedness Shortfalls Limit the Response," Migration Policy Institute, March 2021.

²⁰¹ Stef W. Kight, "CDC lets child migrant shelters fill to 100% despite COVID concern," *Axios*, March 5, 2021.

²⁰² Priscilla Alvarez, "Biden administration tells facilities for migrant children to reopen to pre-pandemic levels," *CNN*,

challenges hiring staff, because applicants were wary of working in congregate settings.²⁰³ While some unaccompanied children in ORR custody have reportedly been vaccinated,²⁰⁴ vaccination of others is complicated by the lack of a COVID-19 vaccine for children under age 12.²⁰⁵

In addition, the Biden Administration opened previously closed and new temporary shelter facilities, sometimes called *Influx Care Facilities* or *Emergency Intake Sites*.²⁰⁶ Such facilities can be set up relatively quickly compared to conventional ORR-supervised state-licensed shelters that require between six and nine months to open.²⁰⁷ Temporary facilities are not subject to state licensing requirements, are typically operated by private companies, and reportedly cost ORR about \$775 daily per child compared to about \$290 daily for conventional shelters.²⁰⁸

As of August 27, 2021, ORR was overseeing five facilities that together possessed a capacity to house roughly 14,100 children (**Table 2**).²⁰⁹ At the surge’s peak in March 2021, ORR reportedly required 20,000 beds to keep pace with the influx. It used the temporary facilities for older children in order to reserve space in smaller, state-licensed conventional shelters for “tender age” children under age 13.²¹⁰ At the end of June 2021, unaccompanied children were spending between 30 and 40 days in ORR custody.²¹¹

Table 2. Temporary ORR Facilities for Unaccompanied Children

(Status as of August 27, 2021)

Facility	Type	Location	Capacity	Date Opened in 2021	Month Closed in 2021
Carrizo Springs	ICF	Carrizo Springs, TX	856	February 22	
Midland	EIS	Midland, TX	609	March 21	June
ORR at Fort Bliss	EIS	Ft. Bliss, TX	10,000	March 30	
Pecos	EIS	Pecos, TX	1,950	April 6	

March 5, 2021.

²⁰³ Eileen Sullivan, Zolan Kanno-Youngs and Luke Broadwater, “Overcrowded Border Jails Give Way to Packed Migrant Child Shelters,” *New York Times*, May 10, 2021; and Dara Lind, “‘No Good Choices’: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021.

²⁰⁴ Nathaniel Weixel, “Biden administration vaccinating migrant children against COVID-19,” *The Hill*, June 9, 2021.

²⁰⁵ U.S. Department of Health and Human Services, Administration for Children and Families, *Field Guidance #17 – COVID-19 Vaccination of Unaccompanied Children (UC) in ORR Care*, June 10, 2021.

²⁰⁶ Influx Care Facilities (ICFs) and Emergency Intake Sites (EISs) are temporary unlicensed facilities, sometimes located on federal property, that provide ORR-overseen shelter and UAC services during periods of unusually high ORR referral volume. While ICFs have been used by ORR since 2014, EISs were established in March 2021. EISs provide a higher standard of care than that found in CBP facilities, but reportedly, HHS has not committed to have such facilities comply with state laws, regulations, and codes, as it has with ICFs. See Danilo Zak, “Explainer: Emergency Shelters and Facilities Housing Unaccompanied Children,” *National Immigration Forum*, May 4, 2021; and Dara Lind, “‘No Good Choices’: HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities,” *ProPublica*, April 1, 2021.

²⁰⁷ Bipartisan Policy Institute, “This Week in Immigration,” Episode 94, podcast interview with Mark Greenberg, Migration Policy Institute, May 17, 2021.

²⁰⁸ Siliva Foster-Frau, “First migrant facility for children opens under Biden,” *Washington Post*, February 22, 2021.

²⁰⁹ Office of Refugee Resettlement, Legislative Affairs Office, email correspondence with CRS dated May 27, 2021.

²¹⁰ Nick Miroff, Andrew Ba Tran, and Leslie Shapiro, “Hundreds of minors are crossing the border each day without their parents. Who are they?,” *Washington Post*, March 11, 2021.

²¹¹ U.S. Department of Health and Human Services, “Latest UC Data – FY2021,” June 24, 2021.

Facility	Type	Location	Capacity	Date Opened in 2021	Month Closed in 2021
Dimmit (Carrizo Springs II)	EIS	Carrizo Springs, TX	436	April 6	July
Delphi	EIS	Donna, TX	1,354	April 6	July
San Diego Convention Center	EIS	San Diego, CA	1,450	March 27	July
Long Beach Convention Center	EIS	Long Beach, CA	771	April 22	August
Pomona Fairplex	EIS	Pomona, CA	1,100	May 2	
Starr Commonwealth	EIS	Albion, MI	189	April 13	
Lackland Air Force Base	EIS	San Antonio, TX	372	April 17	June
Kay Baily Hutchison Convention Center	EIS	Dallas, TX	2,300	March 17	June
Freeman Expo Center	EIS	San Antonio, TX	2,400	March 30	June
National Association of Christian Churches	EIS	Houston, TX	500	April 2	April
Pennsylvania International Academy	EIS	Erie, PA	418	April 17	April

Source: Office of Refugee Resettlement, Office of Legislative Affairs, email to CRS, May 27, 2021; and Danilo Zak, *Explainer: Emergency Shelters and Facilities Housing Unaccompanied Children*, National Immigration Forum, updated June 25, 2021.

Notes: ICF = Influx Care Facility. EIS = Emergency Intake Site.

Concerns have been raised by some about the sizable sums being spent for these temporary shelters, the lack of child welfare experience of the organizations with whom ORR contracted, the absence of a bidding process for some contracts, and Biden Administration links with the enterprises that were awarded contracts.²¹²

Child advocacy groups have expressed additional concerns about temporary facilities' large sizes, lack of state licensing standards and oversight, remote locations, and reported understaffing.²¹³ Media reports indicate that ORR may not be holding these facilities to the same standards as its conventional shelters.²¹⁴ ORR has countered that these facilities are necessary in periods of sudden and unusually high caseloads.²¹⁵

Among temporary facilities, the Fort Bliss EIS has drawn considerable attention.²¹⁶ In July 2021, for example, two federal workers detailed to the facility filed a whistleblower complaint to

²¹² Adriana Gomez Licon, "US awards huge shelter contracts amid child migrant increase," *AP News*, May 5, 2021; and Lachlan Markey and Stef W. Kight, "Exclusive: Texas nonprofit got massive border contract after hiring Biden official," *Axios*, April 14, 2021.

²¹³ Child welfare advocates consider conventional state-licensed shelters preferable to temporary facilities. See, for example, Letter from Pramila Jayapal, United States Representative, to Xavier Becerra, Secretary, Department of Health and Human Services; Alejandro Mayorkas, Secretary, Department of Homeland Security; Cindy Huang, Director, Office of Refugee Resettlement; and Troy Miller, Senior Official Performing the Duties of the Commissioner, Customs and Border Protection, April 13, 2021; and United States Representative Rosa DeLauro, "DeLauro Urges the Biden Administration to Redesign the Unaccompanied Children Program and Limit Use of Influx Facilities," press release, February 10, 2021.

²¹⁴ See, for example, Roxanne Van Ruiten, "Anxiety, depression rampant at HHS migrant children's shelter at Fort Bliss, former workers say," *CBS-3 WRBL*, June 4, 2021; and Dara Lind, "'No Good Choices': HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities," *ProPublica*, April 1, 2021.

²¹⁵ U.S. Department Health and Human Services, "Carrizo Springs Influx Care Facility," press release, June 21, 2021.

²¹⁶ See, for example, Stephanie Shields, "Immigration advocacy groups protest migrant facility for children at Fort

Congress and HHS alleging that the employees of the private contractor running the facility had no child welfare experience, no Spanish language skills, and no relevant prior training.²¹⁷ While not alleging illegal activity, the complaint described what it characterized as gross mismanagement and a threat to public health and safety. The number of unaccompanied children at Fort Bliss, which peaked at 4,800 in May 2021 (the highest recorded number for any ORR facility), declined to under 800 in July 2021.²¹⁸ Other temporary facilities have also faced allegations of mismanagement and possessing conditions considered unsuitable for children.²¹⁹

Other Actions to Address the UAC Surge

The Biden Administration took other steps in response to the surge of unaccompanied children. As noted above, it terminated the 2018 ICE-ORR information-sharing agreement that observers contend discouraged UAC sponsorship.²²⁰ It has reportedly made disaster aid funding available to border communities for migrant-related assistance²²¹ and redirected agents from the northern border to the southern border.²²² To expedite family reunification and ease some housing pressure on its shelter network, ORR has temporarily waived background check requirements for household members living with prospective sponsors²²³ and authorized its shelter operators to pay for some children's transportation costs.²²⁴ In March 2021, the Biden Administration announced that it would reactivate and expand eligibility for the CAM Program that the Trump Administration had terminated.²²⁵

Bliss," *Border Report*, June 9, 2021; and Roxanne Van Ruiten, "Anxiety, depression rampant at HHS migrant children's shelter at Fort Bliss, former workers say," *CBS*, June 4, 2021.

²¹⁷ Government Accountability Project, "Protected Whistleblower Disclosures of Gross Mismanagement by the Department of Health and Human Services at Fort Bliss, Texas Causing Specific Dangers to Public Health and Safety," Letter to the U.S. House of Representatives, Committees on Energy and Commerce, and Oversight and Reform, and to the U.S. Senate, Committees on Health, Education, Labor and Pensions, and Homeland Security and Government Affairs, and to the Office of the Inspector General, U.S. Department of Health and Human Services, July 7, 2021. HHS's inspector general has announced an investigation into the facility. See Priscilla Alvarez, "Government watchdog launches review into troubled Fort Bliss facility for migrant children," *CNN*, August 2, 2021.

²¹⁸ Lauren Giella, "Fort Bliss Shelter for Unaccompanied Minors Sees 40% Drop in Children Housed There," *Newsweek*, June 29, 2021.

²¹⁹ See, for example, Eileen Sullivan, "For Migrant Children in Federal Care, a 'Sense of Desperation'," *New York Times*, June 24, 2021; and Dara Lind, "'No Good Choices': HHS Is Cutting Safety Corners to Move Migrant Kids Out of Overcrowded Facilities," *ProPublica*, April 1, 2021.

²²⁰ See, for example, Mark Greenberg, "U.S. Government Makes Significant Strides in Receiving Unaccompanied Children but Major Challenges Remain," Migration Policy Institute, May 2021.

²²¹ Federal Emergency Management Agency (FEMA), "FEMA Awards \$110 Million to the Emergency Food and Shelter Program to Assist Migrants," press release, March 18, 2021.

²²² Zolan Kanno-Youngs and Michael D. Shear, "Biden Faces Challenge From Surge of Migrants at the Border," *New York Times*, March 8, 2021.

²²³ U.S. Department of Health and Human Services, Administration for Children and Families, *ORR Field Guidance #11, Temporary Waivers of Background Check Requirements for Category 2 Adult Household Members and Adult Caregivers*, March 31, 2021. For a critical view of this policy, see Andrew R. Arthur, "Reports Suggest HHS Is Cutting Corners in Vetting Sponsors of Migrant Children," Center for Migration Studies, May 6, 2021.

²²⁴ Typically, ORR policy requires approved sponsors to pay for such costs, in some cases before children can be released to them. Nomaan Merchant, "Amid surge, US tries to expedite release of migrant children," *AP News*, February 24, 2021.

²²⁵ U.S. Department of State, "Restarting the Central American Minors Program," press release, March 10, 2021. For more information, see USCIS, "Central American Minors (CAM) Refugee and Parole Program," June 11, 2021. For a critical view of the CAM program, see Nayla Rush, "CAM and PTA: Opening the Back Door: The likely revival and expansion of the programs for Central Americans," Center for Immigration Studies, January 21, 2021; and Nayla Rush,

The Biden Administration has expanded government agency coordination in response to the UAC surge. It has directed FEMA to assist with UAC processing and to help relieve the number of children held in CBP facilities.²²⁶ DHS established an interagency Movement Coordination Cell that streamlines federal operations to expedite the transfer of unaccompanied children from DHS to ORR custody.²²⁷ The Administration recruited volunteers among federal agencies to serve four-month details helping ORR process unaccompanied children.²²⁸ CBP hired teams of social service workers to handle non-enforcement tasks related to UAC processing.²²⁹

In June, the Biden Administration asserted that its policies had reduced the number of unaccompanied children in CBP custody to pre-surge levels. As of June 8, 2021, CBP held 514 unaccompanied children, who spent an average of 21 hours in custody; none had been in CBP custody for more than 72 hours.²³⁰

Explanations for the UAC Surge

Some observers attribute the UAC surge to a so-called Biden Effect stemming from a perception of the Administration's less restrictive immigration enforcement policies relative to those of the Trump Administration. Such policies, they contend, have signaled to migrants that they should ignore the Administration's appeals to remain in their home countries.²³¹ Some suggest that the Biden Administration's exemption of unaccompanied children from Title 42 and its continued use for family units may have inadvertently increased UAC apprehensions by prompting some parents to self-separate from their minor children who could then migrate to the U.S. border and

"The Biden Administration Expands Access to CAM: Eligibility to petition for children to join is no longer limited to lawfully present parents," Center for Immigration Studies, June 15, 2021.

²²⁶ According to DHS, "FEMA is now integrated and co-located with HHS to look at every available option to quickly expand physical capacity for appropriate lodging. The workforce of DHS, including CBP, the Federal Protective Service, U.S. Immigration and Customs Enforcement, and volunteers from across the Department through the DHS Volunteer Force, will help to provide shelter capacity, security, and other support as needed." U.S. Department of Homeland Security, "Homeland Security Secretary Mayorkas Directs FEMA to Support Response for Unaccompanied Children," press release, March 13, 2021. See also Zolan Kanno-Youngs, "Biden Administration Directs FEMA to Help Shelter Migrant Children," *New York Times*, March 15, 2021.

²²⁷ Testimony of Benjamin "Carry" Huffman, CBP Executive Assistant Commissioner, Enterprise Services, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, 117th Cong., 1st sess., June 10, 2021.

²²⁸ During the 2019 surge of family units at the Southwest border, the Trump Administration also solicited volunteers to assist DHS. See Eric Katz, "Biden Asks Feds Across Government to Volunteer to Assist at the Border," *Government Executive*, March 26, 2021.

²²⁹ See, for example, John Burnett, "The Border Patrol's New Migrant Child Care Cadre," *NPR*, April 6, 2021.

²³⁰ Testimony of David Shahoulian, DHS Assistant Secretary for Border Security and Immigration, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, *Unaccompanied Children at the Border: Federal Response and the Way Forward*, 117th Cong., 1st sess., June 10, 2021.

²³¹ See, for example, Ken Cuccinelli, "Biden in Denial As Border Crisis Escalates Due to His Rhetoric and Immigration Policies," *Immigration Commentary*, The Heritage Foundation, March 17, 2021; and Mark Krikorian, "The Biden Effect Continues at the Border," *National Review*, February 26, 2021. For an alternative interpretation, see Jorge Ramos, "More Immigrants Will Come to the U.S. Under President Biden. That's a Good Thing," *New York Times*, January 8, 2021. For two assessments of causes for the surge of unaccompanied children at the start of the Biden Administration, see Brandon Mulder, "Fact-check: Is the surge of migrant children arriving at border a result of Biden policies?," *Austin American-Statesman*, March 29, 2021; and Linda Qiu, "Fact-Checking Claims on the Migrant Surge at the U.S.-Mexico Border," *New York Times*, March 20, 2021. See also Nick Miroff and Maria Sacchetti, "Migrant teens and children have challenged three administrations, but Biden faces rush with no precedent," *Washington Post*, March 22, 2021.

seek asylum as unaccompanied children.²³² Other critics of the Biden Administration’s response to the surge characterize some of its policies toward unaccompanied children—particularly the CAM program and ORR covering airfare expenses to reunite some unaccompanied children with their sponsors—as effectively completing the smuggling loop initiated by children’s parents.²³³

Other observers counter that the UAC surge results from pent-up demand for asylum by migrants living under precarious conditions in Mexico because of the Trump Administration’s policies. These included the use of Title 42 for all migrants and the Mexican Migration Protocol.²³⁴ They also point to an unusual confluence of push factors, particularly two hurricanes and the pandemic, which exacerbated already challenging conditions in UAC source countries.²³⁵

Congressional Funding

When UAC apprehensions reached a then-record high in 2014, policymakers initially focused on whether the various agencies responding to it had adequate funding. As the surge began to wane, congressional attention shifted to mechanisms to prevent its recurrence. In recent years, congressional focus has emphasized funding ORR operations. ORR’s UAC program is one line item in its Refugee and Entrant Assistance account.²³⁶ Described below are funding requests, legislative action regarding funding, and executive branch budget execution, including budgetary transfers, reprogramming of funds, and reallocations since FY2015.

FY2015

In its FY2015 budget released in March 2014, the Obama Administration did not request funding increases to address the UAC surge. However, on May 30, 2014, the Office of Management and Budget (OMB) updated its cost projections for addressing the growing UAC population. It requested \$2.3 billion for FY2015 for ORR’s UAC program and \$166 million for DHS for CBP overtime, contract services for care and support of UAC, and transportation costs.²³⁷

²³² See, for example, David J. Bier, “Did US Policy Cause Half of ‘Unaccompanied’ Children to Separate From Parents?,” Cato Institute, April 14, 2021.

²³³ See, for example, Robert Law, “Reuters Exposes Parents’ Complicity in UAC Smuggling Scheme,” Center for Immigration Studies, March 27, 2021; and Mark Krikorian and Nayla Rush, “Don’t Come to the U.S. Illegally – We’ll Come Get You!,” Parsing Immigration Policy, Episode 14, Center for Immigration Studies, July 29, 2021.

²³⁴ See Michelle Hackman and Alicia A. Caldwell, “Biden’s Immigration Plan for Surge of Migrants at U.S. Southern Border: What You Need to Know,” *Wall Street Journal*, May 12, 2021; and Muzaffar Chishti and Sarah Pierce, “Border Déjà Vu: Biden Confronts Similar Challenges as His Predecessors,” *Policy Beat*, Migration Policy Institute, April 1, 2021.

²³⁵ Linda Qiu, “Fact-Checking Claims on the Migrant Surge at the U.S.-Mexico Border,” *New York Times*, March 20, 2021.

²³⁶ Within the UAC program, shelter care accounts for about 75% of all program costs. Other services for UAC, such as medical care, background checks, and family unification services, make up approximately 20% of the budget, followed by administrative expenses to carry out the program (5%). See U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 62. In addition to the UAC program, the Refugee and Entrant Assistance Program administers the following programs: Transitional/Cash and Medical Services, Victims of Trafficking, Social Services, Victims of Torture, Preventive Health, and Targeted Assistance. For additional information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

²³⁷ Executive Office of the President, Office of Management and Budget, Memorandum to Representative Nita Lowey, May 30, 2014.

On July 8, 2014, the Obama Administration requested a \$3.7 billion supplemental appropriation for FY2015, much of which was directly related to addressing the UAC surge. The request included \$433 million for CBP, \$1.1 billion for ICE, \$1.8 billion for HHS's UAC program, \$64 million for DOJ, and \$300 million for the Department of State (DOS).²³⁸

In December 2014, the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. 113-235) provided nearly \$1.6 billion for ORR's Refugee and Entrant Assistance Programs for FY2015, with the expectation that most of these funds would be directed toward the UAC program. In addition, P.L. 113-235 included a new provision allowing HHS to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds.²³⁹

In March 2015, the Department of Homeland Security Appropriations Act, 2015 (P.L. 114-4) provided \$3.4 billion to ICE for detection, enforcement, and removal operations, including transportation of unaccompanied alien children. The act required that DHS estimate the number of UAC apprehensions expected in the budget year and the number of necessary agent or officer hours and related costs. It also provided for budgetary flexibility through the optional reprogramming of funds.²⁴⁰

FY2016

In its FY2016 budget, the Obama Administration requested contingency funding, in addition to base funding, for several agencies in the event of another surge of unaccompanied children. For ORR's UAC program, the Administration requested \$948 million in base funding (the same as FY2015) and \$19 million in contingency funding.²⁴¹ Congress passed the Consolidated Appropriations Act, 2016 (P.L. 114-113) which met the base funding request but appropriated no monies for contingency funding.²⁴²

For FY2016 DHS funding, the Administration requested \$203.2 million in base funding and \$24.4 million in contingency funding for CBP for costs associated with the apprehension and care of unaccompanied children.²⁴³ The Obama Administration requested \$2.6 million in contingency funding for ICE for transportation costs associated with UAC apprehensions if such

²³⁸ The White House, "Fact Sheet: Emergency Supplemental Request to Address the Increase in Child and Adult Migration from Central America in the Rio Grande Valley Areas of the Southwest Border," press release, July 8, 2014.

²³⁹ This paragraph is excerpted from CRS Report R43967, *Labor, Health and Human Services, and Education: FY2015 Appropriations*.

²⁴⁰ Section 571 of the act permitted the DHS Secretary to reprogram funds within CBP and ICE and transfer such funds into the two agencies' "Salaries and Expenses" accounts for the care and transportation of UAC. Section 572 of the act allowed for State Homeland Security Program and Urban Area Security Initiative grants that are awarded to states along the Southwest border to be used by recipients for costs or reimbursement of costs for providing humanitarian relief to unaccompanied children.

²⁴¹ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2016, Justification of Estimates for Appropriations Committees*, p. 21.

²⁴² *Ibid*, p. 8.

²⁴³ The total CBP contingency request was for \$134.5 million for costs associated with the apprehension and care of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC apprehensions, the FY2016 budget scored the requested increase at \$24.4 million.

apprehensions exceeded those in FY2015.²⁴⁴ Neither the Senate²⁴⁵ nor the House²⁴⁶ committee-reported FY2016 DHS appropriations bills would have funded these requests. The Administration requested an additional \$50 million (two-year funding spread over FY2016 and FY2017) for EOIR to expand a program to provide legal representation to UAC.²⁴⁷ Congress passed the Consolidated Appropriations Act, 2016 (P.L. 114-113) which did not provide funds for EOIR to expand their UAC legal representation program. In the act, Congress provided CBP with \$204.9 million in base funding but did not provide the contingency funding requested. Congress provided ICE with \$24.3 million in UAC transportation funding but did not fund the contingency transportation request.²⁴⁸

FY2017

For FY2017, the Trump Administration requested \$1.3 billion for ORR for unaccompanied children. This UAC program request included \$1.2 billion in base funding. It also included contingency funding, which, if triggered by larger than expected caseloads, would start at \$95 million and could expand to \$400 million.²⁴⁹ For UAC operations within DHS, the Administration requested \$13.2 million for transportation and removal activities, including \$3 million in contingency funding; and \$217.4 million for CBP, including \$5.4 million in contingency funding.

Congress, in turn, passed two continuing resolutions (CRs) to fund ORR for FY2017. Congress first passed the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act (P.L. 114-223), which funded ORR, ICE, and CBP from October 1, 2016, through December 9, 2016, at the same level and under the same conditions as FY2016, less an across-the-board reduction of 0.496%. Under the terms of the CR, HHS retained its authority from the 2016 bill (P.L. 114-113) to augment this account by up to 10% using transfers from other HHS accounts. HHS reportedly used this authority to transfer \$167 million into the account in November 2016, due to a surge in the UAC caseload.²⁵⁰

Prior to congressional consideration of a second CR, the Trump Administration requested that any new CR include a provision providing a higher operating level for the Refugee and Entrant Assistance account. This stemmed from an increased caseload resulting from the growth in the number of unaccompanied children from Central American countries apprehended at the Southwest border. The Administration requested \$3.9 billion in funding for the account, \$2.9

²⁴⁴ Base funding for ICE to transport UAC was not separated out from other ICE transportation activities within its budget. The total ICE contingency request was for \$27.6 million for costs associated with transportation of up to 104,000 UAC. Based on the anticipated low probability of such a high number of UAC requiring such transportation, the FY2016 budget scored the requested increase at \$2.6 million.

²⁴⁵ U.S. Congress, Senate Committee on Appropriations, Subcommittee on Department of Homeland Security, *Department of Homeland Security Appropriations Bill, 2016*, 114th Cong., 1st sess., S.Rept. 114-68.

²⁴⁶ U.S. Congress, House Committee on Appropriations, Subcommittee on Homeland Security, *Department of Homeland Security Appropriations Bill, 2016*, 114th Cong., 1st sess., H.Rept. 114-215.

²⁴⁷ U.S. Department of Justice, *FY2016 Budget and Performance Summary*, Administrative Review and Appeals, Executive Office for Immigration Review (EOIR).

²⁴⁸ See U.S. Department of Homeland Security, *FY2017 Congressional Budget Justification*.

²⁴⁹ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2017, Justification of Estimates for Appropriations Committee*, p. 237.

²⁵⁰ Letter from Sylvia M. Burwell, Secretary of Health and Human Services, to the Honorable Roy Blunt, Chairman of the Labor, Health and Human Services, Education, and Related Agencies Subcommittee of the Senate Committee on Appropriations, November 9, 2016, provided by HHS to CRS. The general HHS transfer authority provision is located in Division H, Title II, Section 205 of the Consolidated Appropriations Act, 2016 (P.L. 114-113).

billion of which would be used for unaccompanied children. The Administration separately noted that it might be possible to meet caseload demands at a lower level than requested. It indicated that doing so would require at least \$500 million for the Refugee and Entrant Assistance account—of which \$430 million would be used for unaccompanied children—as well as additional transfer authority in the event of higher than anticipated costs.²⁵¹

Congress then passed a second FY2017 CR, the Further Continuing and Security Assistance Appropriations Act, 2017 (P.L. 114-254), which funded most federal agencies through April 28, 2017.²⁵² It funded ORR programs at the same level and under the same conditions as in FY2016, minus an across-the-board reduction of 0.1901%.²⁵³ However, this CR also contained a special provision authorizing HHS to transfer up to \$300 million to fund ORR programs dedicated to unaccompanied children as of February 1, 2017.²⁵⁴ After March 1, 2017, if the UAC caseload for FY2017 exceeded by 40% or more the UAC caseload for the comparable period in FY2016, the CR appropriated up to an additional \$200 million in new funding.

Congress subsequently passed the Consolidated Appropriations Act, 2017 (P.L. 115-31), which funded most federal agencies for the remainder of FY2017. It funded ORR programs at the same level and under the same conditions as in FY2016. P.L. 115-31 rescinded the provision in P.L. 114-254 to provide up to \$200 million in new funding if the UAC caseload met the conditions described above. Ultimately, final funding approved for ORR's unaccompanied alien children program for FY2017, including transfers, totaled \$1.4 billion.²⁵⁵

FY2018

For FY2018, the Trump Administration requested \$948 million for ORR's UAC program. The request included an option to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds. The request excluded contingency funding provisions found in several previous years' requests.²⁵⁶

Congress responded by passing the Consolidated Appropriations Act, 2018 (P.L. 115-141), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Transfers permitted by Congress within HHS to this account totaled \$186 million. Within the account, funding for the Unaccompanied Alien Children program was increased to \$1.3 billion (+\$355 million relative to FY2017).²⁵⁷ HHS also reprogrammed or transferred \$385 million from other HHS programs to

²⁵¹ The Trump Administration's anomaly requests for the second CR were based on the assumption that the CR would run through the end of March 2017, one month less than the duration of the CR that was ultimately enacted.

²⁵² P.L. 114-223.

²⁵³ P.L. 114-254, §101(a)(2).

²⁵⁴ P.L. 114-254, §170. The CR specifies that this transfer comes from the HHS Nonrecurring Expenses Fund (NEF). The NEF was created by the Consolidated Appropriations Act, 2008 (P.L. 110-161, Division G, Title II, §223) to enable the HHS Secretary to collect certain unobligated balances of expired discretionary funds appropriated to HHS from the General Fund. Funds transferred into the NEF typically support capital acquisitions across HHS, such as facilities infrastructure and information technology. The FY2017 CR also includes a provision rescinding \$100 million from the NEF (see §170(d)).

²⁵⁵ Total FY2017 budget authority included \$466,590,000 transferred from other parts of HHS. U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2019, Justification of Estimates for Appropriations Committee*, p. 67.

²⁵⁶ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2018, Justification of Estimates for Appropriations Committee*, pp. 11-45.

²⁵⁷ See CRS Report R45083, *Labor, Health and Human Services, and Education: FY2018 Appropriations*, p. 29.

ORR, reportedly to cover the additional expenses stemming from the zero tolerance policy.²⁵⁸ Final actual spending for the UAC program for FY2018, including permissible transfers and reprogramming, was \$1.7 billion.²⁵⁹

FY2019

For FY2019, the Trump Administration requested \$1.0 billion for ORR's UAC program.²⁶⁰ The Administration further requested the option to augment appropriations for the Refugee and Entrant Assistance account by up to 10% through transfers from other discretionary HHS funds. The budget also created a \$200 million contingency fund if caseloads met certain conditions.

Congress responded by passing the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (P.L. 115-245), which funded HHS's Refugee and Entrant Assistance account at \$1.9 billion. Within the account, funding for the Unaccompanied Alien Children program was \$1.3 billion, the same as for FY2018. Congress did not fund the requested mandatory contingency fund.²⁶¹

On May 17, 2019, OMB notified Congress that it anticipated a budget shortfall for the UAC program of \$2.9 billion because of a 57% increase in the number of UAC referrals to ORR compared to the same period during the previous year. The notification indicated that HHS had already reallocated \$286 million to the UAC program using the HHS Secretary's transfer authority pursuant to P.L. 115-245 and had reprogrammed \$99 million within the Refugee and Entrant Assistance account.²⁶²

Congress responded by passing the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (P.L. 116-26) which contained nearly \$2.9 billion in emergency-designated appropriations for the Refugee and Entrant Assistance account. These funds were primarily intended to support the growing demands placed on the UAC program, including the use of influx care facilities in Carrizo Springs, TX, and Homestead, FL. Among the bill's many provisions, it required HHS to reverse any reprogramming within the account that had been carried out pursuant to the OMB notification.

Final actual spending for the UAC program for FY2019, including supplemental funding, permissible transfers, and reprogramming, was \$4.5 billion.²⁶³

²⁵⁸ H.Rept. 116-62, p. 11.

²⁵⁹ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, p. 60.

²⁶⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2019, Justification of Estimates for Appropriations Committee*, pages 67-71.

²⁶¹ U.S. Congress, Senate Committee on Appropriations, Subcommittee on Departments of Labor, Health and Human Services, and Education, and Related Agencies, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2019*, 115th Cong., 2nd sess., June 28, 2018, S.Rept. 115-289; and U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committee*, p. 15.

²⁶² Report and Notice of Anticipated Deficiency, Letter from Russell T. Vought, Acting Director, Office of Management and Budget, to The Honorable Nancy Pelosi, Speaker of the House of Representatives, May 17, 2019.

²⁶³ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, p. 60.

FY2020

For FY2020, the Trump Administration requested \$1.3 billion, the same as the FY2019 appropriation. The Administration also requested transfer authority to allow additional funding of up to 20% of the appropriated amount into the account, which was above the 15% maximum that Congress provided in FY2019. The budget also included a request for a mandatory contingency fund capped at \$2.0 billion over three years, probabilistically scored at \$738 million for FY2020, if caseload trends met certain conditions.²⁶⁴

Congress responded by passing the Consolidated Appropriations Act, 2021 (P.L. 116-260), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Within the account, Congress appropriated \$1.3 billion for the Unaccompanied Alien Children program (the same as FY2019), did not fund the requested mandatory contingency fund, and maintained transfer authority at 15%.²⁶⁵

FY2021

For FY2021, the Trump Administration requested \$2.0 billion, \$700 million above the FY2020 enacted level.²⁶⁶ As with FY2020's budget, the Trump Administration also requested transfer authority to allow additional funding of up to 20% of the appropriated amount into the account, above the 15% maximum that Congress provided in FY2020. The budget also included a request for a mandatory contingency fund capped at \$2.0 billion over three years, probabilistically scored at \$200 million for FY2021, if caseload trends met certain conditions.

Congress responded by passing the Consolidated Appropriations Act, 2021 (P.L. 116-260), which funded the Refugee and Entrant Assistance account at \$1.9 billion. Within the account, Congress maintained funding for the Unaccompanied Alien Children program at \$1.3 billion, did not fund the requested mandatory contingency fund, and again maintained transfer authority at 15%.²⁶⁷

In response to increased UAC apprehensions in FY2021, ORR reportedly transferred roughly \$2.1 billion from other health-related initiatives to fund the Unaccompanied Alien Children program. The redirected funds include \$850 million intended to rebuild the Strategic National Stockpile, an emergency medical reserve; \$850 million intended for COVID-19 testing; and \$436 million intended for multiple HHS health initiatives.²⁶⁸ The Biden Administration reportedly estimated in May 2021 that it would require an additional \$4 billion before FY2021 ends to fund the UAC program.²⁶⁹ Additional intra-agency transfers have reportedly occurred.²⁷⁰

²⁶⁴ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2020, Justification of Estimates for Appropriations Committee*, pp. 57-58.

²⁶⁵ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, pp. 58-59.

²⁶⁶ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2021, Justification of Estimates for Appropriations Committee*, pp. 58-59.

²⁶⁷ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 57.

²⁶⁸ Adam Cancryn, "Biden admin reroutes billions in emergency stockpile, Covid funds to border crunch," *Politico*, May 16, 2021.

²⁶⁹ Eileen Sullivan, Zolan Kanno-Youngs, and Luke Broadwater, "Overcrowded Border Jails Give Way to Packed Migrant Child Shelters," *New York Times*, May 10, 2021.

²⁷⁰ Adam Shaw, "HHS diverting millions in funding marked for vaccine efforts to housing migrant children," *Fox News*, August 28, 2021.

FY2022

For FY2022, the Biden Administration requested \$3.3 billion, an increase of \$2.0 billion above the \$1.3 billion enacted for FY2021.²⁷¹ The increase includes a \$30 million set-aside to establish a Separated Families Services Fund that would provide mental health and other services for children, parents, and legal guardians who were separated under the Trump Administration.²⁷² The House responded with a proposed \$3.4 billion budget for the UAC program.²⁷³ As of this writing, the Senate has not taken action.

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²⁷¹ U.S. Department of Health and Human Services, Administration for Children and Families, *Fiscal Year 2022, Justification of Estimates for Appropriations Committee*, p. 57.

²⁷² *Ibid.*, p. 60.

²⁷³ U.S. Congress, House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Report to accompany H.R. 4502, 117th Cong., 1st sess., H.Rept. 117-96 (Washington: GPO, 2021), pp. 208-215.