

Five Fast Facts about Unaccompanied Children and the 2014 Border Crisis and Three Ways You Can Make a Difference

Immigration by children to the United States is nothing new. The Children and Family Justice Center's immigration practice has been representing children in immigration court proceedings for more than ten years.

So, what's new about this issue and why was it front and center in the news this summer? Why did President Obama, for example, describe the situation at the border as "an urgent humanitarian crisis?" Why did we see pictures of thousands of children sleeping on the floor at military bases? Where are these children from and why are they coming to the United States? Finally, what has happened to the children and did the President's recent executive actions grant them relief?

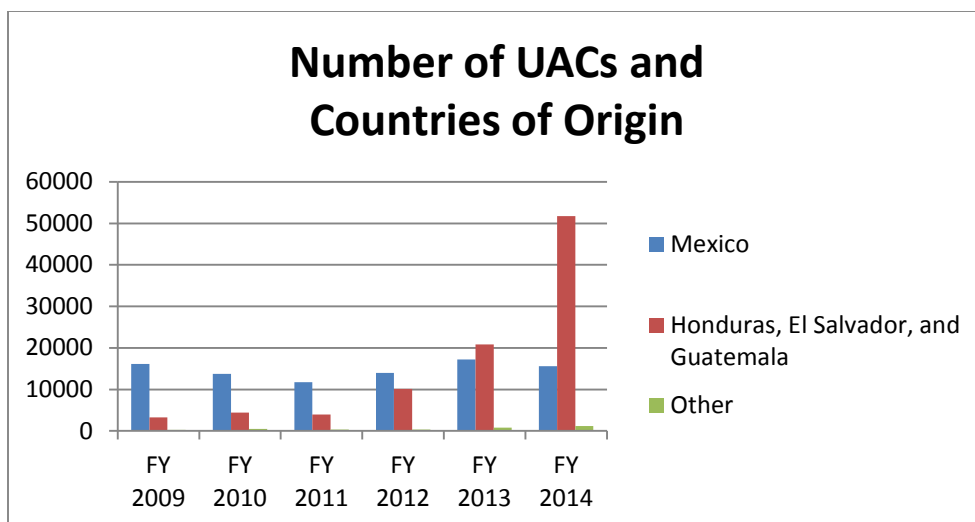
Now that the dust has settled, we thought we would share five important facts you should know about unaccompanied children and explain three ways you can make a difference on the issue.

Fact 1. In Fiscal Year 2014, the U.S. Apprehended a Record-Breaking 68,541 Children (Mostly from Central America) Attempting to Cross Our Borders Alone

Our immigration laws refer to children who come alone to the United States as unaccompanied alien children or UACs.¹ Customs and Border Protection ("CBP"), an agency of the Department of Homeland Security, apprehends and processes a majority of the children who cross our borders unaccompanied. The Office of Refugee Resettlement ("ORR"), an agency of the Department of Health and Human Services, detains apprehended children in several detention facilities located throughout the country.

CBP has been tracking the number of unaccompanied minors since fiscal year 2009. That year, about 20,000 children crossed unaccompanied.² The number has been increasing dramatically since the end of 2011 and this fiscal year, close to 70,000 children attempted to cross our borders alone -- a nearly 250% increase since 2009.³

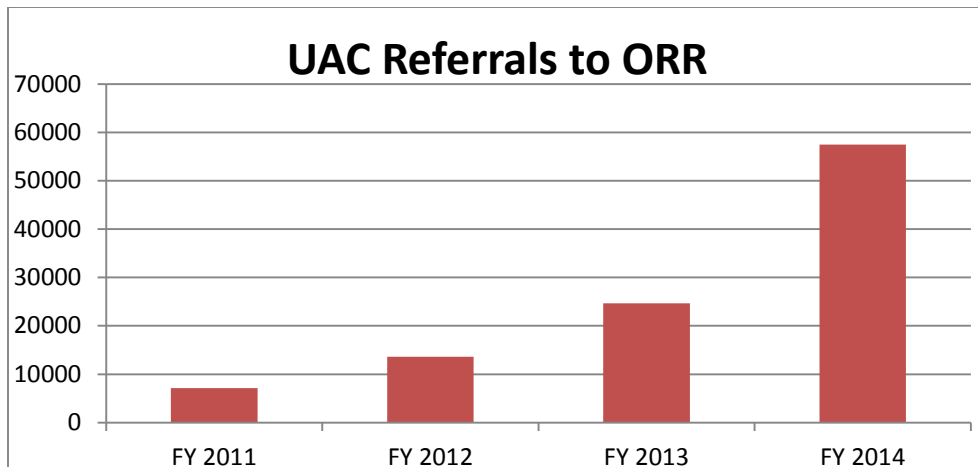
The nationality of most unaccompanied children has also changed significantly since fiscal year 2009. In 2009, about 82% of the children apprehended were from Mexico.⁴ In 2014, however, Mexican children only comprised about 22% of the children apprehended, while children from El Salvador, Honduras, and Guatemala comprised about 77% of all children apprehended along the southwest border.⁵



Fact 2. Children Were Warehoused in Military Bases This Summer as a Result of Our Flawed Immigration Laws and the Administration’s Failure to Adjust to Changing UAC Demographics

Our immigration laws do not treat all apprehended children the same. After apprehension, CBP determines a child’s age and whether he or she is unaccompanied.⁶ CBP also determines if the child is from a contiguous country, like Mexico, or a noncontiguous country. Mexican children can be sent back almost immediately.⁷ Children from noncontiguous countries are subject to a different process that includes detention in ORR facilities and eventual release to relatives.⁸

In 2014, several bottlenecks developed in the system due to the administration’s failure to anticipate and direct sufficient resources to agencies involved in the processing and detention of children. Prior to fiscal year 2012, when most of the children CBP apprehended were from Mexico, ORR only had to provide detention space for about 7,000 children.⁹ In 2012, the number of children referred to ORR for detention doubled to almost 14,000.¹⁰ By 2013, even fewer children were coming from Mexico and nearly 25,000 children (about 60% of the children apprehended) were transferred to ORR for detention.¹¹ ORR opened new detention facilities in 2013 but was clearly stretched thin by the flood of children.¹² Although ORR was aware that the numbers would likely increase in 2014, it was unprepared to house and detain almost 58,000 children, more than double the number of children in custody the previous year.¹³ The lack of detention and processing capacity resulted in the tragic warehousing of children at border patrol stations and military bases.



Fact 3. Honduras, El Salvador, and Guatemala Are Some of the Most Violent and Lawless Places in the World and Young People Are Fleeing Violence

The three countries where most children are from, Honduras, El Salvador, and Guatemala (often referred to collectively as the Northern Triangle), are currently some of the most violent countries in the world. Honduras, El Salvador and Guatemala rank as numbers 1, 4, and 5, respectively, on the list of the world's deadliest countries.¹⁴ The homicide rate in Honduras, for example, is 90.4 per 100,000¹⁵ (compared to the U.S. rate of about 5).¹⁶ In San Pedro Sula, Honduras' most violent city and the world's deadliest city, the homicide rate is about 173 per 100,000¹⁷ (compared to Chicago's 18.5).¹⁸

Honduras, El Salvador, and Guatemala lack the resources and institutions to deal effectively with the extreme levels of violence they are facing. The Northern Triangle countries have primarily adopted a law-enforcement-only approach to address heightened levels of violence.¹⁹ This type of approach, however, fails to take into consideration the lack of law enforcement capacity in these countries.²⁰ The entire country of Honduras, for example, has only about 14,500 police officers,²¹ which is less than half of New York City's police force of 36,023.²² Not surprisingly, the so called "mano dura" or hardline approaches have done little to curb violence and homicide rates remain high in all three countries.²³

Law enforcement institutions in the Northern Triangle countries are also crippled by corruption. Criminal groups in all three countries have penetrated the police force and police engage in grave abuses of their police power, including arbitrary detention and extrajudicial killing of poor youth.²⁴ The elevated levels of police corruption have prompted some governments to hand over power to the armed forces, institutions with a long history of human rights abuses in Central America.²⁵

Studies show that most of the Central American children apprehended at the border are fleeing violence. In March 2014, the United Nations High Commissioner for Refugees ("UNHCR") published a report based on interviews with 404 unaccompanied children who arrived in the United States at the start of the crisis.²⁶ Nearly half had experienced or been threatened with serious harm by organized criminal actors, state actors, or other actors within their communities and 21% of the children disclosed abuse in the home.²⁷

Given the complex nature of the problems driving the children to flee their countries, our approach to the problem must be equally multifaceted and take into consideration our international and domestic obligations to protect individuals who are at risk of serious harm.

Fact 4. Children Seeking Protection From Violence Must Fight to Remain in the United States Without Any Guarantees to a Lawyer

Children are not appointed lawyers in immigration court, despite our complex immigration laws, the high stakes involved in removal proceedings, the worthiness of their claims, and their inability to adequately represent themselves. Children, like adults in immigration court, have the right to be represented by counsel but have no right to appointed counsel.²⁸ The government, on the other hand, is always represented by an attorney in immigration court.

Studies consistently show that having a lawyer in immigration court matters. The Transactional Records Access Clearinghouse (“TRAC”), a data gathering, research, and distribution organization at Syracuse University, has collected data about juvenile cases in immigration court.²⁹ TRAC data shows that children with lawyers are more likely to show up to court; about 90% of represented children appear in court compared to only about 28% of children without lawyers.³⁰ Outcomes are also better for children who have an attorney to navigate the system and to present evidence about their circumstances to a judge; children appearing in immigration court without a lawyer are almost three times as likely to receive a removal order and be deported to countries where they are likely to face dangerous levels of violence.³¹

Fact 5. The President’s Recent Executive Actions Do Not Protect Children Who Crossed the Border in the Summer from Deportation

On November 20, 2014, President Obama announced initiatives to address the situation of millions of immigrants living without status in the United States. The President’s executive actions would allow anyone living without status in the United States to apply to stay temporarily in the U.S. without fear of deportation if the person has been in the United States for more than five years, has children who are U.S. citizens or legal residents, can pass a criminal background check and is willing to pay taxes.³² The President also expanded the Deferred Action for Childhood Arrivals (“DACA”) program by eliminating the age cap and changing the date on which a person is required to show that he or she has been continuously present in the United States.³³ The President also tweaked other immigration programs, including programs relating to family-based immigration, naturalization, foreign students, high-skilled immigrants and entrepreneurs.³⁴

In his speech, the President excluded from protection anyone who recently entered the United States.³⁵ The President’s initiatives exclude many of the children who entered the United States this summer. In fact, recent entry into the United States continues to be an enforcement priority for the Department of Homeland Security.³⁶ Thus, the risk of deportation remains real for many unaccompanied children who arrived in the United States this year.

Now that you know the facts, here are three ways you can make a difference:

Volunteer to Represent a Child in Immigration or State Court

According to ORR 2012 data, about 57% of detained children qualified for some form of immigration relief.³⁷ Of that number 31% qualified for asylum and 56% qualified for special immigrant juvenile status (SIJS).³⁸ SIJS is an immigration status for children who have been abused, abandoned or neglected.³⁹ Before a child can apply for SIJS, he must obtain an order (known as predicate order) from any state court that can make determinations about the custody and care of children.⁴⁰ In Illinois, such orders can be obtained from juvenile, domestic relations or probate court. Many immigration attorneys are unfamiliar with these courts. Lawyers who practice in these courts can help by volunteering to represent children in proceedings to obtain predicate orders.

Children also need lawyers to represent them in immigration court and before agencies of the Department of Homeland Security. Only about 31% of youth with pending cases in immigration court have lawyers.⁴¹ Children's cases usually involve complex areas of asylum law which are difficult and expensive to litigate. Many children and their families cannot afford to pay private attorneys and rely mostly on *pro bono* representation.

Take Action to Stop Congress and the Administration from Making It Easier to Send Children Home

At the height of the crisis this summer, Congress put forth several knee-jerk proposals that if implemented would curtail the due process rights of unaccompanied children. One such proposal would treat children from noncontiguous countries the way we treat children from Mexico.⁴² The proposed legislative changes assume that our treatment of Mexican children gets it right and seek to expedite the removal of the children from the United States by transferring much of the responsibility for making determinations about whether to detain or return a child to border agents.⁴³

CBP agents, who are in essence law enforcement personnel, are ill-equipped to make determinations about which children should be detained or returned. A June 2014 UNHCR report found several issues with how CBP agents currently process unaccompanied children from Mexico. The report found that interviewing conditions at the border were not child friendly or conducive to obtaining information necessary to determine if a child is in need of protection.⁴⁴ The report also found that CBP agents consistently misinterpreted the relevant laws and policies about which children should be transferred to ORR custody.⁴⁵ Our current practices of screening Mexican children at the border do not work and should not serve as a basis for how we treat children who cross our borders alone. You can help by calling your congressional representatives and senators to let them know that sending children home without due process is not the answer to this humanitarian issue.

Support the Work of the CFJC's Immigration Team

There are many ways to support the CFJC's work with immigrant children. You can help us grow our capacity to represent unaccompanied minors and advocate for their rights by volunteering to represent our clients in probate, domestic relations or juvenile court. You can also volunteer to interpret or translate documents. Finally, you can donate to the CFJC by clicking here: <http://www.law.northwestern.edu/legalclinic/cfjc/>.

¹ 6 U.S.C. § 279 (g) (2014).

² U.S. BORDER PATROL, UNACCOMPANIED CHILDREN (AGE 0-17) APPREHENSIONS FISCAL YEAR 2008 THROUGH FISCAL YEAR 2012, <https://www.hsdl.org/?view&did=734433> (last visited Dec. 9, 2014).

³ U.S. BORDER PATROL, JUVENILE (0-17 YEARS OLD) AND ADULT APPREHENSIONS – FISCAL YEAR 2013 (OCT. 1ST THROUGH SEPT. 30TH), <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf> (last visited Dec. 9, 2014); U.S. BORDER PATROL, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN (FY 2014), <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014> (last visited Dec. 9, 2014).

⁴ U.S. BORDER PATROL, UNACCOMPANIED CHILDREN (AGE 0-17) APPREHENSIONS FISCAL YEAR 2008 THROUGH FISCAL YEAR 2012, *supra* note 2.

⁵ UNITED STATES BORDER PATROL, SOUTHWEST BORDER UNACCOMPANIED ALIEN CHILDREN (FY 2014), *supra* note 3.

⁶ 8 U.S. C. § 1232 (a) (2) (2014)

⁷ *Id.*

⁸ *Id.* § 1232 (a) (4); 8 C.F.R. § 236.3 (2014).

⁹ OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HUMAN SERVICES, UNACCOMPANIED ALIEN CHILDREN PROGRAM FACT SHEET, https://www.acf.hhs.gov/sites/default/files/orr/fact_sheet.pdf (last updated November 2014) [hereinafter UNACCOMPANIED ALIEN CHILDREN FACT SHEET].

¹⁰ UNACCOMPANIED ALIEN CHILDREN PROGRAM FACT SHEET, *supra* note 9.

¹¹ *Id.*

¹² OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HUMAN SERVICES, REPORT TO THE CONGRESS FY 2012, at 71, https://www.acf.hhs.gov/sites/default/files/orr/fy_2012_orr_report_to_congress_final_041014.pdf (last updated July 19, 2012).

¹³ UNACCOMPANIED ALIEN CHILDREN PROGRAM FACT SHEET, *supra* note 9.

¹⁴ U.N. OFFICE ON DRUGS AND CRIME, GLOBAL STUDY ON HOMICIDE 2013: TRENDS, CONTEXTS, AND DATA, at 126, U.N. Sales No. 14.IV.1 (March 2014) [hereinafter GLOBAL STUDY ON HOMICIDE 2013]. *See also* Charlotte Alfred, *These Ten Countries Have the World's Highest Murder Rates*, HUFFINGTON POST, April 10, 2014, www.huffingtonpost.com/2014/04/10/worlds-highest-murder-rates_n_5125188.html.

¹⁵ GLOBAL STUDY ON HOMICIDE 2013, *supra* note 14, at 126.

¹⁶ *Id.*

¹⁷ Sibylla Brodzinsky, *Inside San Pedro Sula, the most violent city in the world*, THE GUARDIAN, May 15, 2013, <http://www.theguardian.com/world/2013/may/15/san-pedro-sula-honduras-most-violent>.

¹⁸ FBI, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REPORTING STATISTICS 2012: CHICAGO VIOLENT CRIME RATE, <http://www.ucrdatatool.gov/Search/Crime/Local/RunCrimeJurisbyJuris.cfm> (last data entry Dec. 9, 2014).

¹⁹ Steven S. Dudley, *Drug Trafficking Organizations in Central America: Transportistas, Mexican Cartels, and Maras*, in ORGANIZED CRIME IN CENTRAL AMERICA: THE NORTHERN TRIANGLE 18, 43 (Cynthia J. Arnson and Eric L. Olson eds., Woodrow Wilson Center Reports on the Americas No. 29, November 2011), http://www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.

²⁰ Dudley, *supra* note 19, at 54.

²¹ Peter J. Meyer, HONDURAS-U.S. RELATIONS 10 (Congressional Research Service, July 24, 2013).

²² BRIAN A REAVES, BUREAU OF JUSTICE STATISTICS, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008 (July 2011), <http://www.bjs.gov/content/pub/pdf/csllea08.pdf>.

²³ Dudley, *supra* note 19, at 43.

²⁴ Dudley, *supra* note 19, at 34.

²⁵ Cynthia J. Arnson and Eric L. Olson, *Introduction* to ORGANIZED CRIME IN CENTRAL AMERICA: THE NORTHERN TRIANGLE 1, 9 (Cynthia J. Arnson and Eric L. Olson eds., Woodrow Wilson Center Reports on the Americas No. 29, November 2011), http://www.wilsoncenter.org/sites/default/files/LAP_single_page.pdf.

²⁶ U.N. HIGH COMMISSIONER FOR REFUGEES, CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION, at 25 (2014), *available at* http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

²⁷ *Id.* at 25-28.

²⁸8 U.S. C. § 1229a (b) (4) (A) (2014); 8 U.S. C. § 1362 (2014).

²⁹TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, NEW DATA ON UNACCOMPANIED CHILDREN IN IMMIGRATION COURT, <http://trac.syr.edu/immigration/reports/359/> (last updated July 15, 2014).

³⁰American Immigration Council, TAKING ATTENDANCE: NEW DATA FINDS MAJORITY OF CHILDREN APPEAR IN IMMIGRATION COURT, <http://www.immigrationpolicy.org/just-facts/taking-attendance-new-data-finds-majority-children-appear-immigration-court> (last updated July 29, 2014).

³¹ TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, NEW DATA ON UNACCOMPANIED CHILDREN IN IMMIGRATION COURT, *supra* note 29.

³²President Barack Obama, Address to the Nation on Immigration (November 20, 2014) (transcript *available at* <http://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>).

³³*Id.*

³⁴*Id.*

³⁵*Id.*

³⁶ JEH CHARLES JOHNSON, U.S. DEP'T OF HOMELAND SECURITY, MEMORANDUM ON POLICIES FOR THE APPREHENSION, DETENTION AND REMOVAL OF UNDOCUMENTED IMMIGRANTS 4 (November 20, 2014), http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

³⁷OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HUMAN SERVICES, REPORT TO THE CONGRESS FY 2012, *supra* note 12, at 75.

³⁸*Id.*

³⁹8 U.S.C. § 1101 (a) (27) (J) (2014).

⁴⁰*Id.*

⁴¹TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, NEW DATA ON UNACCOMPANIED CHILDREN IN IMMIGRATION COURT, *supra* note 29, at Table 3.

⁴² Protection of Children Act of 2014, H.R. 5143, 113th Cong. (2d Sess. 2014), *available at* <https://www.govtrack.us/congress/bills/113/hr5143>. *See also* Asylum Reform and Border Protection Act of 2014, H.R. 5137, 113th Cong. § 17 (2d Sess. 2014), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/5137/text>.

⁴³ H.R. 5143 § 2.

⁴⁴ U.N. HIGH COMMISSIONER FOR REFUGEES, CONFIDENTIAL REPORT ON FINDINGS AND RECOMMENDATIONS RELATING TO THE 2012-2013 MISSION TO MONITOR THE PROTECTION SCREENING OF MEXICAN UNACCOMPANIED CHILDREN ALONG THE U.S.-MEXICO BORDER, at 14, (June 2014), *available at* http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf.

⁴⁵ *Id.* at 23.