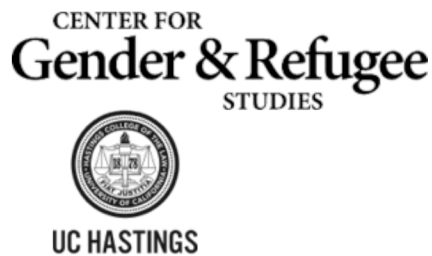


Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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Chapter 9 Detention and Treatment of Unaccompanied Migrant Children at the U.S.-Mexico Border

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I. Introduction

Detention of migrant children in the United States has a complex history. Although the U.S. government has made significant progress in the conditions and circumstances under which children are held in government custody, there are still significant concerns over the conditions and use of child detention. Although children should never be detained due to immigration status, the government may have a need to maintain custody of children who are unaccompanied or whose safety is at risk. In 2002, the responsibility for the care and custody of unaccompanied migrant children was transferred from an immigration enforcement agency to a government agency with considerably more expertise with child welfare standards. However, many government detention facilities, particularly those run by Customs and Border Protection (CBP) along the U.S.-Mexico border, are not appropriate for children. Among CBP's shortcomings is its failure to use the best interest of the child framework for custody decisions of children.

The recent surge of unaccompanied children detained by the United States has led the government to make changes to its procedures for the release of children. There is growing concern these new procedures are inadequate to protect children in vulnerable circumstances. This chapter provides an overview of current and prior U.S. immigration detention practices with respect to children traveling alone and with families.

II. The U.S. government's immigration enforcement framework

A. Overview of key agencies

Although the introduction to the U.S. chapters contains an overview of key U.S. immigration agencies, we briefly provide a recap of the main enforcement arms of the Department of Homeland Security (DHS) here. DHS was created in response to the September 11, 2001, terrorist attacks in the United States to coordinate a comprehensive national strategy to safeguard the country against terrorism and respond to any future attacks. Two of its agencies, CBP and Immigration and Customs Enforcement (ICE), are responsible for all immigration enforcement in the United States.¹

CBP is charged specifically with securing the U.S. borders and facilitating trade, and initially apprehends and detains children who are trying to enter the United States without authorization.

¹ Prior to the creation of the DHS, the Immigration and Naturalization Service (INS), which was established on June 10, 1933 as part of the Department of Justice, protected and enforced the U.S. Immigration and Naturalization laws. The INS also addressed illegal entrance into the United States, prevented receipt of benefits such as social security or unemployment by those ineligible to receive them, and investigated, detained, and deported those illegally living in the United States.

CBP is tasked with inspections at U.S. ports of entry and with preventing irregular entries between the ports of entry. While its primary mission is preventing terrorists and terrorist weapons from entering the United States, CBP is also responsible for apprehending individuals attempting to enter the United States irregularly, including those with a criminal record and those without authorization to enter, as well as stemming the flow of illegal drugs and other contraband.

The two components of CBP most likely to encounter immigrant children entering the United States are the Office of Field Operations (OFO) and Border Patrol (BP). OFO officers screen all foreign visitors, returning U.S. citizens, and imported cargo entering the U.S. at more than 300 land, air, and sea ports. BP agents work along U.S. borders in the areas between ports of entry. BP is responsible for securing almost 6,000 miles of border between the U.S. and its Canadian and Mexican neighbors, as well as other coastal areas.²

ICE is tasked with enforcing immigration laws in the interior of the country. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade and immigration. The agency devotes the majority of its resources to its two principal operating components—Homeland Security Investigations (HSI), responsible for detecting criminal immigrants, and Enforcement and Removal Operations (ERO), dedicated to removing migrants without authorization to remain in the United States.³

B. Militarization of U.S.-Mexico border

Militarization of the U.S. border began under President Ronald Reagan, intensified under President Bill Clinton, and dramatically expanded following the terrorist attacks of September 11, 2001 (9/11). In response to the 9/11 attacks, the United States reorganized many federal government agencies, creating DHS, described above. Prior to the creation of DHS, responsibility for establishing immigration policy, administering benefits, and securing the border lay with the Department of Justice (DOJ) and, before DOJ, the Department of Labor (DOL).

Under the DOL, immigration was considered “a worker issue,” and under DOJ it was considered “a legal and civil rights issue;” now, under DHS, “it is an enforcement and terrorism issue.”⁴ The budget for border security has also grown significantly. According to the Migration Policy Institute, a well-known think-tank, “border enforcement costs [a total of] \$18 billion a year, more than all other federal criminal-law-enforcement agencies combined.”⁵ The number of border patrol

² See U.S. Customs and Border Protection. At Ports of Entry. Retrieved from <http://www.cbp.gov/border-security/ports-entry>; U.S. Customs and Border Protection. Along U.S. Borders. Retrieved from <http://www.cbp.gov/border-security/along-us-borders>.

³ See U.S. Immigration and Customs Enforcement. Overview. Retrieved from <http://www.ice.gov/overview>; U.S. Immigration and Customs Enforcement. Homeland Security Investigations. Retrieved from <http://www.ice.gov/hsi>; U.S. Immigration and Customs Enforcement. Enforcement and Removal Operations. Retrieved from <http://www.ice.gov/ero>.

⁴ Kim, M. J. (2011, September 8). After 9/11, Immigration Became About Homeland Security. *U.S. News & World Report*. Retrieved from <http://www.usnews.com/news/articles/2011/09/08/after-911-immigration-became-about-homeland-security-attacks-shifted-the-conversation-heavily-toward-terrorism-and-enforcement>.

⁵ The Economist. (2013, June 22). The US-Mexico Border: Secure Enough. Spending Billions More on Fences and Drones Will Do More Harm than Good. *The Economist*. Retrieved from <http://www.economist.com/news/usa/21579828-spending-billions-more-fences-and-drones-will-do-more-harm-good-secure-enough>.

officials has increased to over 20,000. Moreover, the U.S. National Guard is deployed to monitor the border with military equipment such as drones (unmanned aircrafts) and mobile surveillance devices.⁶

Believing that irregular migration poses a major threat to U.S. security, some members of Congress have argued for greater enforcement and security measures at the border.⁷ However, the security-focused bills that have been introduced in Congress emphasize only how to physically stop individuals from crossing the border without detection, and do not address root causes of migration or how to create alternatives to migration.

In response to the publicized increase in unaccompanied migrant children arriving in the United States in mid-year 2014, the Obama Administration requested emergency supplemental funding from Congress to cover the additional costs of caring for the children in federal custody and for other purposes. Included in the Administration's \$3.7 billion funding request was \$39 million to "increase air surveillance capabilities to improve detection and interdiction of illegal activity in the Rio Grande Valley region."⁸ The U.S. House of Representatives passed a supplemental appropriations bill on August 1, 2014 that would increase border security even beyond the Administration's request.⁹ However, legislators and Administration officials have not provided justification for further security and militarization of the entire U.S. southern border given that most of the unaccompanied children and migrant families (primarily single women with children) arrive in only one section of the southern border and turn themselves over to border patrol. In other words, they are not trying to slip in undetected. Also missing from the debate is how greater border security in the short-term will solve the problems forcing Central Americans to migrate over the long-term.

Armed and uniformed CBP officers, whose role is both to stop terrorists and arrest individuals who cross the border in violation of U.S. law, apprehend and question child migrants. The fact that CBP, the same agency charged with identifying and stopping terrorists, is also charged with preventing asylum seekers and other migrants from entering the United States documents has been argued by some to lead border officials to treat all migrants like dangerous criminals. The dual yet dramatically different functions CBP performs, stopping "terrorists" and apprehending irregular immigrants, require different approaches, training, and priorities—making it very difficult for the same agency to perform both functions. According to international standards, apprehending and

⁶ U.S. Department of Homeland Security. (2014, September 10). *Securing and Managing Our Borders: Implementing 9/11 Commission Recommendations, Progress Report 2011*. Retrieved from <https://www.dhs.gov/securing-and-managing-our-borders>.

⁷ *See, e.g.*, H.R. 5230, 113th Cong. (2013-2014). Retrieved from <https://www.congress.gov/bill/113th-congress/house-bill/5230> (sending National Guard to the border, providing millions in additional funding for border enforcement); H.R. Res. 330, 113th Cong. (2013-2014). Retrieved from <https://www.congress.gov/bill/113th-congress/house-resolution/330> (prohibiting any immigration reform legislation from advancing until the southern border is secured).

⁸ *See* The White House. (2014, July 8). *Emergency Supplemental Request*. Retrieved from http://www.whitehouse.gov/sites/default/files/omb/assets/budget_amendments/emergency-supplemental-request-to-congress-07082014.pdf.

⁹ This bill did not become law. The U.S. legal system requires that for a bill to become enacted into law both Houses of Congress (the Senate and House of Representatives) must pass the bill and the President must sign it into law. The bill passed by the Senate differed significantly from the House bill. The result was that no supplemental funding bill passed.

screening children requires especially unique training in a child-sensitive approach due to the needs and vulnerabilities children have distinct from adults.¹⁰ The current lack of such approach, and the need for more child-sensitive policies, is discussed in greater detail in section IV, below.

III. How migrant children arrive at the U.S. southern border seeking entry

Most migrant children attempting to enter the United States, traveling alone or with family, cross into the United States through the U.S.-Mexico border. Central American children often travel through Mexico without a guide or smuggler. They risk serious danger by hitchhiking, walking in gang-controlled areas, and even riding on tops of trains. For more on the dangers faced by children during their migration journey, see chapter 6 on Southern Mexico and chapter 10 on U.S. immigration remedies and procedures.

Once at the U.S.-Mexico border, children may present themselves at an official port of entry and ask for asylum or protection, or they may attempt to cross into the country between ports of entry, usually in the desert. Over the years, as CBP has increased enforcement along the U.S.-Mexico border, migrants attempting to enter between ports of entry have been forced to try and enter through areas that are very rural and have incredibly rough terrain. As a result, many migrants attempting the crossing are entering through the extremely dangerous South Texas area. Children presenting themselves at the ports of entry are screened by OFO officers. If they do not have authorization to enter the United States, they are held in their facilities until they can be repatriated or sent to longer-term government custody. Children who are apprehended by BP agents attempting to enter between the ports of entry are taken to CBP short-term hold facilities until ICE transfers them to longer-term government facilities or until they can be repatriated.

With the increasingly dangerous conditions for migrants crossing through the desert to enter into the United States, OFO has reported an increase of migrants, including children, who do not have authorization to enter the country attempting to use false documents at ports of entry rather than risking the dangerous desert crossing. These migrants present themselves at the ports either to immediately ask for asylum, often with documents that are either entirely fraudulent or that are valid but belong to another person.¹¹ In fiscal year 2013 OFO apprehended 1,892 unaccompanied children at Ports of Entry.¹² In fiscal year 2013, BP apprehended 47,397 children (8,564 accompanied and 38,833 unaccompanied); and in fiscal year 2014, it apprehended 107,613 children (38,982 accompanied and 68,631 unaccompanied).¹³ For more information on the numbers of children arriving at the U.S.-Mexico border, see chapter 1.

¹⁰ See U.N. Committee on the Rights of the Child (CRC), CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, § VIII, CRC/GC/2005/6 (2005, September 1). Retrieved from <http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf> (calling for specialized training for all officials working with unaccompanied and separated children).

¹¹ Interview with Jennifer Podkul with official, U.S. Customs and Border Protection, in San Ysidro Port of Entry, Ca. (2013, Dec. 3).

¹² The figures cited are based on statistics shared with the Women's Refugee Commission by OFO. OFO also shared that in FY 14, up through July, OFO apprehended 3,722 UACs.

¹³ U.S. Border Patrol. (2014). *U.S. Border Patrol Fiscal Year 2013 Sector Profile*, p. 2. Retrieved from <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>; U.S. Border Patrol. (2015). *U.S. Border Patrol Fiscal Year 2014 Sector Profile*, p. 2. Retrieved from <http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf>. Chapter 1 contains additional information on children apprehended by OFO.

IV. The process when an unaccompanied child is apprehended trying to enter the United States without permission

A. Different treatment for children from non-contiguous countries

As previously stated, CBP officials¹⁴ are the most likely enforcement officials to apprehend children attempting to enter the U.S. through the Mexican border. After apprehension, the children will be taken to a CBP short-term hold facility for processing. Processing begins with intake, where critical information is gathered by an agent. This process occurs for all unaccompanied children, regardless of their country of origin. A child has no right to have an attorney with her during this process of creating official court documents, despite the fact that information gathered at the intake can be used against her in immigration court procedures. Intake procedures include collecting information regarding the child's name; age; legal status; medical history or health; locations of immediate family members; locations and phone numbers of any friends or relatives in the United States; names and phone numbers of the person or persons in the United States with whom the child was in contact; and, if applicable, any smuggling arrangements made. Information gathered at intake is important for providing services for unaccompanied children, as it can later help establish the suitability of reunification with a parent or guardian and help in assessing the child's needs while in custody.

Upon apprehending an individual who claims to be or is suspected of being under 18, CBP must make an age determination—the first formal step in the complex process of identifying an unaccompanied child and a necessary precursor to such child's transfer to an appropriate facility. The child facility is usually administered by the Department for Unaccompanied Child Services (DCS), part of the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS).

Unfortunately, DHS does not have expertise in child welfare and often makes determinations using just one technique, usually a dental exam or radiograph: methods that experts have found to be unreliable.¹⁵ In addition to the use of flawed techniques, age determinations can be complicated by a lack of reliable identity documents, lack of specific knowledge of birth date on the part of the apprehended individual, or misinformation provided by the apprehended individual. This is particularly true for children who have no formal education or indigenous children, whose cultures often do not emphasize dates. As a result, some children have been improperly determined to be adults and placed in adult detention facilities, sometimes for years at a time. These facilities are based on a model intended for adults with criminal histories and are entirely inappropriate for children. ICE does not inform ORR of any individuals deemed adults, as ORR has custody only over unaccompanied children.

¹⁴ There are no guardians or child protection officers in CBP facilities, contrary to what the CRC Committee recommends in its General Comment on unaccompanied children.

¹⁵ Office of the Inspector General, Department of Homeland Security. (2009, November). Age Determination Practices for Unaccompanied Alien Children in ICE Custody, p. 10. Retrieved from http://www.oig.dhs.gov/assets/Mgmt/OIG_10-12_Nov09.pdf. See also Ceberio Belaza, M. (2014, July 18). El Supremo prohíbe someter a todos los menores inmigrantes a pruebas de edad. *El Pais Política*. Retrieved from http://politica.elpais.com/politica/2014/07/18/actualidad/1405709552_799676.html.

Once DHS has determined that an individual is under the age of 18, it must then determine whether he or she meets the definition of an unaccompanied child. The Homeland Security Act of 2002 (HSA) defines an unaccompanied alien child (UAC) as a child who “has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States who is available to provide care and physical custody.”¹⁶ If the child meets the definition of UAC and is from a non-contiguous country, the child should be transferred to an appropriate facility within 72 hours of apprehension or discovery.¹⁷ ICE is responsible for these transfers. In the past when ORR has been overwhelmed and has not had capacity to take additional children in to their care, children have been held as long as two weeks in CBP short term hold facilities in conditions that are wholly inappropriate for children.

B. Children from contiguous countries

Different rules apply to children coming to the United States from contiguous countries than to children coming from other parts of the world. While these rules apply to children from both Canada and Mexico, in practice, it is children from Mexico who are most affected and will be discussed in this section.

Prior to 2008, CBP could immediately return a Mexican child arriving from Mexico through a voluntary return process. Due to the growing concern that many of these children were victims of human trafficking or eligible for asylum protection in the United States, Congress passed the Trafficking Victim Protection Reauthorization Act (TVPRA) of 2008.¹⁸ This new law stopped immediate returns of Mexican children. It required CBP officials to determine during initial intake whether an unaccompanied child is a national of a contiguous country; is not a potential victim of trafficking; has no possible claim to asylum; and can and does voluntarily accept return. Unless all of these questions are answered in the affirmative, the child *cannot* be immediately returned to Mexico, but rather must remain to be evaluated for a claim to protection in the United States.¹⁹

If it appears that the child does not have authorization to enter the United States, and can safely be returned to Mexico, she can be repatriated without ever being placed in immigration proceedings. If any of the answers to the inquiries the U.S. officials must make are negative, or if no determination of all three criteria can be made within 48 hours, the TVPRA mandates that the child shall “immediately” be transferred to ORR custody. Once transferred to ORR, Mexican children are treated like all other unaccompanied children in detention.²⁰

The protections that flow from the TVPRA remain as important as ever. Mexican children have become an easy target for human traffickers and other organized crime. Mexico is a source, transit

¹⁶ Homeland Security Act (hereinafter “HSA”) of 2002, Pub. L. 107-296, § 462(g), 116 Stat. 2135, 2205 (2002).

¹⁷ See discussion in part III, section C “Children Traveling with Family Members” for a discussion on the concerns caused by the definition of unaccompanied alien child as it relates to non-parent family members.

¹⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (hereinafter “TVPRA of 2008”), Pub. L. 110-457, 122 Stat. 5044 (2008),

¹⁹ TVPRA of 2008, § 235(a)(2).

²⁰ Cavendish, B., & Cortazar, M. (2011). *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (hereinafter “Children at the Border”), p. 19. Retrieved from <http://appleseednetwork.org/wp-content/uploads/2012/05/Children-At-The-Border1.pdf>.

and destination for human trafficking.²¹ Furthermore, “the high [financial] cost of [migrating to the United States] places juveniles in jeopardy, causing some young migrants to assume unsustainable levels of debt which they will be coerced into repaying.”²² The growing control over cross-border migration exercised by Mexico’s drug cartels, which regard human trafficking as an important potential source of revenue and children as easy and valuable prey, further increases these risks.²³

“Children who reside near the border or who seek to cross it may become caught up with organized gangs that smuggle immigrants or contraband. Mexican consular officials refer to such children as the “*menores de circuito*”—children who are forced into the smuggling of drugs, or the smuggling of other children and adults, across the border. Children may be attractive to criminal organizations as mules because if they are caught, they are likely to be sent immediately back across the border to Mexico without being detained or prosecuted, as discussed below. Once back in Mexico, they can again smuggle drugs or people.²⁴ For more information on treatment of children on the Mexico side of the border, see chapter 7.

The United States has tried to break up these smuggling rings with a new program that refers these children for criminal prosecution and puts them into formal removal proceedings instead of just allowing these children to return to Mexico. There are many concerns that this program does nothing to protect these children, but rather is a punitive measure.

1. Concerns with TVPRA screening of Mexican children

Unfortunately, the current system of having border agents screen Mexican children is inadequate to ensure protection of these Mexican children.²⁵ Many who are forced or coerced into working for criminal organizations have not been identified by CBP officials as victims of human trafficking.²⁶ Instead, they are generally repatriated immediately. In May 2014, CBP began a program called the “Juvenile Referral Program” to refer repeat crossers to the Office of Refugee Resettlement. The intent of the program is to break the smuggling ring and stop these children from working as foot guides. It is not clear they are all being identified as victims of human trafficking, and there are no special programs for these children.²⁷

²¹ U.S. Department of State. (2014). Trafficking in Persons Report 2014, p. 271. Retrieved from http://www.state.gov/j/tip/rls/tiprpt/2014/?utm_source=NEW+RESOURCE:+Trafficking+in+Persons+R.

²² Children at the Border, p. 16.

²³ Children at the Border, p. 16.

²⁴ Children at the Border, p. 16.

²⁵ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, pp. 110-112 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

²⁶ Ferriss, S. (2011, September 2). Child advocates say more should be done to assist immigrant minors crossing the border. *Center for Public Integrity*. Retrieved from <http://www.publicintegrity.org/2011/09/02/6109/child-advocates-say-more-should-be-done-assist-immigrant-minors-crossing-border>.

²⁷ Vera Institute of Justice. (2012, March). The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers, p. 20. Retrieved from <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

There have been many concerns raised by researchers and child welfare experts about the adequacy of the TVPRA-mandated screening.²⁸ To determine whether a child meets the criteria to remain in the United States, CBP officers interview the child at the CBP facility often in full view of other detainees, possibly their traffickers. The CBP officer fills out *CBP Form 93*, which contains only cursory questions and suggestions to determine credible fear and human trafficking.²⁹ Questions include: “Do you have any fear or concern about returning to your home country or being removed from the United States?;” “Would you be harmed if you returned to your home country?;” and “Is the child engaged in any type of labor?.”³⁰

Experts have found that this screening is not conducted in a manner or in environments likely to elicit information on whether the child is a potential victim of trafficking or abuse, or whether the child can and does voluntarily agree to return to Mexico. Moreover, many girls experience sexual violence in their home country and en route to the United States; this kind of abuse is very hard to disclose to a male law enforcement agent. The main weakness identified with the current process is that DHS agents are law enforcement agents: experts in enforcing immigration laws rather than child welfare. Many experts have found that CBP officers do not receive sufficient training or tools to equip them to satisfy the law.³¹ During the screening, children are not informed of their rights, often have little or no comprehension regarding their options, and may believe that they have no choice other than to return to Mexico. Agreeing to return to Mexico under these circumstances cannot be said to be truly “voluntary.”

For example, one boy reported being returned to Mexico despite reporting to Border Patrol agents that he was scared to return because he was being trafficked. The agents instead told him to return to help gather more information for their criminal investigation.³² The United Nations High Commissioner for Refugees (UNHCR), in its review of the process of screening Mexican children, determined CBP has operational practices that “continue to reinforce the presumption of an absence of protection needs” rather than a presumption of “international protection need” that can be ruled out as required by U.S. law.³³ For more information on UNHCR’s recommendations and a detailed description and analysis of its interviews of children at the border, see chapter 1.

²⁸ Children at the Border, p. 31. *See also* Women’s Refugee Commission. (2009). *Halfway Home*, p. 36. Retrieved from <http://womensrefugeecommission.org/resources/document/196-halfway-home-unaccompanied-children-in-immigration-custody>. In 2013, the United Nations High Commissioner for Refugees undertook a confidential study to evaluate the screening of Mexican children to help advise the United States government in how to improve the process.

²⁹ *See* Children at the Border, Appendix 25, Exhibit 5. (Providing a copy of CBP Form 93).

³⁰ *See* Children at the Border, Appendix 25, Exhibit 5. (Providing a copy of CBP Form 93).

³¹ Children at the Border, p. 31. *See also* Center for Gender and Refugee Studies & Kids in Need of Defense. (2014). *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, p. 49. Retrieved from http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf.

³² Ferriss, S. Child advocates say more should be done to assist immigrant minors crossing the border. *Center for Public Integrity*. Retrieved from <http://www.publicintegrity.org/2011/09/02/6109/child-advocates-say-more-should-be-done-assist-immigrant-minors-crossing-border>.

³³ UNHCR. (2014, June). *Findings and Recommendations Relating to the 2012 – 2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border*, p. 5. Retrieved from http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf (hereinafter “UNHCR Findings and Recommendations Relating to the 2012 – 2013 Missions”).

DHS Office of Inspector General recommended that in order to improve their ability to screen and protect Mexican children, CBP agents receive better and more frequent training on what human trafficking is³⁴ and how to effectively interview a child.

Consular involvement. Mexican children found by CBP to be without protection concerns, can be immediately repatriated. The mechanisms of their repatriation are governed by an umbrella agreement between DHS and the Secretary for External Relations of Mexico, implemented by local agreements at different border areas.³⁵ These mechanisms, explored briefly below, are examined in more detail in chapter 13 on regional and bilateral agreements.

In 2009, the U.S. and Mexican government created a bilateral agreement that creates a formalized agreement for the expedited return of Mexican nationals.³⁶ The agreement allows for a series of local arrangements between the United States and Mexico to set forth specific locations and hours when repatriation will be allowed. These local agreements are periodically reviewed and updated to improve arrangements. The local repatriation agreements only allow children to be returned during daylight hours.³⁷ However, as explained in greater detail in chapter 1, UNHCR identified inconsistencies in the implementation of policies,³⁸ which could result in some of the Mexican children who are being repatriated or returned to Mexico are done so in the safe manner provided for in TVPRA.

Under the 1963 Vienna Convention on Consular Relations (Vienna Convention), and other agreements between the United States and Mexico, all Mexican nationals in the United States are guaranteed the right to speak with a consular official. Additionally, the Mexican government will immediately be notified if a citizen is in U.S. government custody, and a Mexican consular official has the right to visit a Mexican national in detention.³⁹ Most unaccompanied Mexican children are interviewed by someone from the Mexican consulate before they are returned at the border. CBP has given Mexican consular officials office space in many of the OFO and BP stations, so that a local consular official can come to the facility to interview the migrant and help facilitate repatriation. When CBP wants to return a child to Mexico, the consular official will coordinate the

³⁴ Office of the Inspector General, Department of Homeland Security. (2010, September). CBP's Handling of Unaccompanied Alien Children (hereinafter "OIG Report"), pp. 21-24. Retrieved from http://www.oig.dhs.gov/assets/Mgmt/OIG_10-117_Sep10.pdf.

³⁵ Immigration and Customs Enforcement. Local Arrangement for the Repatriation of Mexican Nationals. Retrieved from <http://www.ice.gov/doclib/foia/repatriation-agreements/local-arrangements-repatriation-of-mexican-nationals-full-list.pdf>.

³⁶ Department of Homeland Security. (2009, April 3). Secretaries Napolitano and Espinosa Announce Agreement on Mexican Repatriation. Retrieved from <http://www.dhs.gov/news/2009/04/03/agreement-mexican-repatriation-announced>.

³⁷ Immigration and Customs Enforcement. Local Arrangement for the Repatriation of Mexican Nationals. Retrieved from <http://www.ice.gov/doclib/foia/repatriation-agreements/local-arrangements-repatriation-of-mexican-nationals-full-list.pdf>.

³⁸ UNHCR Findings and Recommendations Relating to the 2012 – 2013 Missions, pp. 40-41. While investigating for this report, two field offices visited "told UNHCR that they are not technically bound by these local agreements with Mexico because the agreements address the process of 'repatriation', whereas OFO's return process is the withdrawal of a UAC's application for admission. The language of TVPRA [of 2008], §235(a)(2)(C) uses both 'repatriation' and the more generic term 'return' indicating that the processes employed by both USBP and OFO are to be covered by the local repatriation agreements." UNHCR Findings and Recommendations Relating to the 2012 – 2013 Missions, p. 19 n.17.

³⁹ Vienna Convention on Consular Relations, 1963, April 24, 596 U.N.T.S. 261.

return of that child with the DIF of Mexico to ensure the safe repatriation of that child, as explained in greater detail in chapter 7, on Northern Mexico.⁴⁰ There is concern that the presence of the Mexican officials in the CBP facilities not only may decrease the chance a child will reveal a fear of returning to Mexico, but also that CBP will rely on the consular officials to do all screening of the children, including the kind required by the TVPRA.⁴¹ It may be intimidating for a child to explain to a U.S. official why they think their own government cannot protect them, particularly if the child sees an official from their government waiting in the facility to speak with them. Moreover, CBP agents have told monitors that they believe Mexican consular officials are there to help with the screening, such that they do not feel they themselves must always do a thorough job with their own screening.⁴²

C. Children traveling with family members

Family groups traveling with children represent a third group of immigrants that raise unique issues for DHS. DHS has long struggled with how to treat family units apprehended at the border. Prior to 2001, the Immigration and Naturalization Service (INS) would release families traveling with children immediately from the border. In 2006, ICE, the successor agency to INS, recognized that smugglers were exploiting this loophole by encouraging families to bring their children.⁴³ ICE sought to address this problem by detaining both the adults and the children with them.⁴⁴ INS, then DHS, used a variety of facilities to house families, including local motels.⁴⁵

Initially, DHS had only one family shelter, the Berks Family Residential Center in Leesport, Pennsylvania, which opened in 2001 to accommodate immigrant families in ICE custody. This facility was retro-fitted for families who were placed in administrative immigration proceedings and subject to mandatory detention. The Center remains open today and attempts to be a humane alternative to maintain family unity as families await the outcome of immigration hearings or return to home countries.

Due to a shortage of detention bed space, the agency began placing children in shelters run by DCS, part of ORR in the Department of Health and Human Services, and holding parents in countless ICE-run immigration detention centers and state and county jails.⁴⁶ In some cases this

⁴⁰ For more information, see chapter 7 on Northern Mexico.

⁴¹ UNHCR [Findings and Recommendations Relating to the 2012 – 2013 Missions](#), pp. 42-43.

⁴² UNHCR [Findings and Recommendations Relating to the 2012 – 2013 Missions](#), pp. 42-43.

⁴³ Department of Homeland Security, Immigration and Customs Enforcement. (2006, May 15). DHS Closes Loopholes by Expanding Expedited Removal to Cover Illegal Alien Families. Retrieved from <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C26307%7C19408>.

⁴⁴ Department of Homeland Security, Immigration and Customs Enforcement. (2006, May 15). DHS Closes Loopholes by Expanding Expedited Removal to Cover Illegal Alien Families. Retrieved from <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C26307%7C19408>.

⁴⁵ *The Detention and Treatment of Haitian Asylum Seekers: Hearing Before the Subcomm. on Immigration of the S. Comm. on the Judiciary*, 107th Cong. (2002) (statement of Cheryl Little, Executive Director of the Florida Immigrant Advocacy Center) (stating that Haitian asylum-seekers who are women with children were housed at a local motel).

⁴⁶ Women's Commission for Refugee Women and Children. (2000, October). Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center, p. 3. Retrieved from <https://womensrefugeecommission.org/resources/document/272-behind-locked-doorsabuse-of-refugee-women-at-the-krome-detention-center>.

action protected children from what might have been dangerous smuggling situations, but in other instances it resulted in the forced separation of parents from their children, which unlawfully rendered the children unaccompanied. It also increased detention time of children, as ORR sometimes kept them in custody while waiting for the parents to be released.⁴⁷

Congress discovered this issue and directed DHS to stop separating migrant families. In 2005, the House report accompanying the Department of Homeland Security appropriations bill, 2006, stated:

The Committee is concerned about reports that children apprehended by DHS, even as young as nursing infants, are being separated from their parents and placed in shelters operated by [ORR] while their parents are in separate adult facilities. Children who are apprehended by DHS while in the company of their parents are not in fact “unaccompanied;” and if their welfare is not at issue, they should not be placed in ORR custody. The Committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program whenever possible. When detention of family units is necessary, the Committee directs DHS to use appropriate detention space to house them together.⁴⁸

In May 2005, DHS opened the Don T. Hutto facility specifically to house immigrant families.⁴⁹ Advocates found the facility wholly inappropriate for families with children. Hutto was a jail-like facility that kept families under virtual 24-hour lockdown and denied them privacy, educational opportunities, and adequate health care. In 2009, under increased pressure and scrutiny, including a lawsuit in the United States⁵⁰ and pressure from the Inter-American Commission on Human Rights,⁵¹ ICE stopped using the facility for housing families.⁵² Until 2014, DHS maintained only the Berks facility for families; a non-restrictive residential center, Berks had been praised as a more appropriate model for detaining families.⁵³ In 2014 the number of children being apprehended with parents at the border jumped dramatically, to more 68,445 family units from

⁴⁷ Nugent, C. (2006). Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children, *The Boston Public Interest Law Journal*, 15, p. 230. Retrieved from <https://www.bu.edu/law/central/jd/organizations/journals/pilj/vol15no2/documents/15-2NugentArticle.pdf>.

⁴⁸ H. R. REP. No. 109-79, at 38 (2005). Retrieved from <https://www.congress.gov/109/crpt/hrpt79/CRPT-109hrpt79.pdf>.

⁴⁹ Women’s Commission for Refugee Women and Children, & Lutheran Immigration and Refugee Service. (2007, February). Locking Up Family Values: The Detention of Immigrant Families, p. 1. Retrieved from <http://lirs.org/wp-content/uploads/2012/05/RPTLOCKINGUPFAMILYVALUES2007.pdf>.

⁵⁰ American Civil Liberties Union. (2007, March 6). ACLU Challenges Prison-Like Conditions at Hutto Detention Center. Retrieved from <https://www.aclu.org/immigrants-rights-racial-justice-prisoners-rights/aclu-challenges-prison-conditions-hutto-detention>.

⁵¹ Inter-American Commission on Human Rights. (2009, July 28). IACHR Visits U.S. Immigration Detention Facilities. Retrieved from <http://www.cidh.org/Comunicados/English/2009/53-09eng.htm>.

⁵² Inter-American Commission on Human Rights. (2009, July 28). IACHR Visits U.S. Immigration Detention Facilities. Retrieved from <http://www.cidh.org/Comunicados/English/2009/53-09eng.htm>. See also Brané, M. (2009, August 7). Good News on Immigration Detention, But Keep the Pressure On. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/michelle-bran/good-news-on-immigration_b_254214.html.

⁵³ Irwin, T. (2011, January 6). In rural Pennsylvania, a model of civil immigration detention. *UNHCR, The UN Refugee Agency*. Retrieved from <http://www.unhcr.org/4d25c4fb6.html>.

only 14,855⁵⁴ the year before, DHS opened two new family detention facilities in Artesia, New Mexico and Karnes, Texas. Each facility can hold hundreds of people at a time. Shortly after the opening of the Artesia facilities, attorneys filed suit against the government for violating the rights of families there, alleging numerous due process violations in the assessment of asylum claims of individuals and their right to counsel. In addition to these new facilities, the government has announced plans to open more family detention centers, including a massive 2500-bed facility in Dilley Texas. The expansion of family detention in the United States is a significant step backwards in the protection of human rights for child migrants. It retreats from the policy of releasing families in recognition of their unique circumstances, and comprises one part of a broad effort by the federal government to facilitate “expedited removal” of these families, which reduces their access to fair and robust immigration proceedings and their ability to access asylum and related protections. While the United States has for years had the authority to speed removal of families apprehended within 100 miles of the border and in the country for less than two weeks, the procedure has been little used. Instead, families were generally released and told to report to immigration court. Expedited removal has become the *modus operandi* for treatment of families apprehended within 100 miles of the border as part of an effort to dissuade unauthorized migration. Although unaccompanied children are not subject to expedited removal and are given a full hearing before a judge, a child traveling with their family *are* subject to expedited removal and may not even be screened to determine if they might have their own form of relief from removal. There are alternatives to detention that are far less costly, and far more appropriate, for kids and their parents.

In response to sustained advocacy calling for humane and appropriate standards, DHS analyzed the family detention operations in conjunction with applicable state statutes that specifically affect children, and began formulating standards to address the unique needs of families held in its custody. While developing these standards, ICE solicited guidance from medical, psychological, and educational subject-matter experts while collaborating with various organizations and many non-governmental organizations (NGOs). In late 2007, ICE approved the Family Residential Standards which contain many revisions based on public comments; but again, those standards were approved at a time when many fewer families were held in federal custody. Moreover they are currently under review.

Another issue arising for children traveling with non-parent or legal guardian family members stems from the intersection of the TVPRA and the HSA definition of unaccompanied child. The TVPRA mandates that Border Patrol transfer a UAC within 72 hours of apprehension. Based on the HSA definition of UAC, a child is accompanied only if a parent or legal guardian in the United States is available to take care and custody. When issuing guidance for the treatment of UAC under the TVPRA, the government relies on this definition of UAC from the HSA to determine if a child is accompanied.⁵⁵ Thus, non-parent or legal guardian relatives, such as grandparents and adult siblings, traveling with a child would not be sufficient for the child to qualify as accompanied and

⁵⁴U.S. Border Patrol. (2014). Southwest Border Sectors: Family Unit and Unaccompanied Alien Children (0-17) apprehensions FY 14 compared to FY 13. Retrieved from

http://www.cbp.gov/sites/default/files/documents/BP%20Southwest%20Border%20Family%20Units%20and%20UAC%20Apps%20FY13%20-%20FY14_0.pdf

⁵⁵ Aguilar, D.V. (2009, March 20). Implementation of the Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, p. 2 (redacted). *Memo from Chief, U.S. Border Patrol*. Retrieved from http://legalactioncenter.org/sites/default/files/docs/lac/CBP_Counsel_Production_3.pdf.

be treated by CBP as part of a family, i.e., moved to a family detention facility or released on an order of supervision. Instead, CBP must deem the child unaccompanied and transfer the child to ORR custody. This has led to many children being separated from their caregivers and becoming unaccompanied only as a result of the interpretation of these laws. Unfortunately, this was a negative consequence of the HSA, which itself was designed to protect children from traffickers or smugglers. Prior to the HSA, this category of children was routinely held in custody with adult siblings or other adult family caregivers. CBP is currently reviewing its policy to determine if after careful screening these children can be held together with extended family caregivers.

While it appears that most detained immigrant children in immigration proceedings today are in the custody of ORR, DHS retains custody of some children. In general, ICE should not have custody of any children other than those in family detention; those who have been ordered removed (and whom ICE is in the process of removing); those whom ICE is transferring within 72 hours of apprehension; and those classified as a national security risk under the Patriot Act. There may be cases where children are wrongly detained due to faulty age determinations.⁵⁶

Statistics released by ICE in May 2013, as part of Freedom of Information Act litigation, raise some questions about whether other children are being held in ICE custody. These statistics indicated that ICE had detained 1,366 immigrant children for at least three days in adult detention facilities between 2008 and 2012.⁵⁷ This information showed that DHS detained these children for periods ranging from three days to more than one year, and nearly 1,000 children spent at least one week in adult custody.⁵⁸ Although it is unclear how many children, if any, are spending time in adult facilities, it is important to note adult detention is inappropriate for children.

Another issue has arisen when U.S. citizen children are apprehended and detained with a family member who does not have authorization to enter the country. Because CBP does not have authority to detain U.S. citizens, the children must be released. There is no formal and public CBP policy on how they release these U.S. citizen children and whether or not they will release these children to an undocumented parent or caregiver in the United States. One example of the harm from this lack of clear policy is given below.

⁵⁶ Halfway Home, p. 12.

⁵⁷ National Immigrant Justice Center. (2013, May). Fact Sheet: Children Detained by The Department of Homeland Security in Adult Detention Facilities. Retrieved from http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20Fact%20Sheet%20Minors%20in%20ICE%20Custody%202013%2005%2030%20FINAL_0.pdf.

⁵⁸ National Immigrant Justice Center. (2013, May). Fact Sheet: Children Detained by The Department of Homeland Security in Adult Detention Facilities. Retrieved from http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NIJC%20Fact%20Sheet%20Minors%20in%20ICE%20Custody%202013%2005%2030%20FINAL_0.pdf. (Noting that DHS's data suggests that in that time period four children were detained from 1,000 to 3,600 days.)

“Deportation” of 4-year-old U.S. citizen child to Guatemala

CBP officers at Dulles Airport in Virginia allegedly, unlawfully detained a four year old, U.S. citizen child for more than twenty hours, deprived her of contact with her parents, and then effectively deported her to Guatemala. The girl was returning home from Guatemala when her flight was diverted from New York to Dulles due to inclement weather. After CBP agents stamped the girl’s passport, they directed her grandfather, with whom she was traveling, to secondary inspection due to an issue with his immigration papers, and both he and the girl were detained. CBP detained the girl with her grandfather for the next 20 plus hours, gave her only a cookie and soda during the entire time, and provided her nowhere to nap other than the cold floor.

Despite the grandfather’s repeated requests that CBP let him contact the girl’s parents in New York, they refused to do so. Some fourteen hours after CBP had detained the child, a CBP officer finally contacted the girl’s father, initially promising to put her on a plane to New York. But hours later, CBP again contacted the father, and this time claimed that the girl could not be returned to “illegals.” CBP gave the father one hour to choose between sending her to Guatemala or to an “adoption center” in Virginia. Fearing that he would otherwise lose custody of his daughter, the father decided that the only viable option was for her to go back to Guatemala.⁵⁹

In contrast, the Women’s Refugee Commission was told at the San Ysidro port of entry that CBP will always return a child to the adult they are traveling with, regardless of the adult’s status.⁶⁰

It is important to note that international bodies recommend using alternatives to detention for all child migrants, and that non-extraordinary use of immigration detention for child migrants violates international principles. UNHCR’s detention guidelines state that the detention of asylum seekers is inherently undesirable, and as a general principle asylum seekers should not be detained; moreover, detention should only take place after a full consideration of all possible alternatives.⁶¹ Furthermore, Article 37(b) of the CRC requires that “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁶² Therefore, in order to be compatible with the CRC, all other possible options must have been considered before immigration detention is utilized.⁶³ Many alternatives to

⁵⁹ *Ruiz ex rel. E.R. v. United States*, No. 13-CV-1241 KAM SMG, 2014 WL 4662241 (E.D.N.Y. Sept. 18, 2014). The American Immigration Council provides a summary available at <http://www.immigrationpolicy.org/litigation-clearinghouse/newsletter/lac-docket-volume-iv-issue-4>.

⁶⁰ Interview by Jennifer Podkul with official, U.S. Customs and Border Protection, in San Ysidro Port of Entry, Ca. (2013, Dec. 3).

⁶¹ Office of the United Nations High Commissioner for Refugees. (1999, February). UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, p. 1. Retrieved from <http://www.unhcr.org/protect/PROTECTION/3bd036a74.pdf>.

⁶² Convention on the Rights of the Child art 37(b), 1989, November 20, 1577 U.N.T.S. 3. Retrieved from <http://www.refworld.org/docid/3ae6b38f0.html>.

⁶³ Convention on the Rights of the Child art 37(b).

detention that could be made available by states for unaccompanied children and for families; therefore, detention cannot be seen as “a measure of last resort,” as required by art. 37 of the CRC. Use of a detention as a true “last resort” would require exceptional circumstances, such as a situation where a child was with only one parent and that parent was deemed to be a national security risk, and separating the child from the parent was not considered to be in the child’s best interests. The International Detention Coalition asserts that any restrictions on liberty of children for migration-related reasons must be necessary and proportionate and the least restrictive form possible must be used in order to be compatible with international human rights law.⁶⁴

V. Detention conditions of immigrant children in the United States

A. Overview

When a child entering the United States without authorization is apprehended, he is subject to detention. There are three different kinds of detention a child may be subject to: CBP short-term hold facility detention; longer-term ICE detention facility detention; or shelters and programs specifically for unaccompanied children run by ORR.

In 1985, a class action lawsuit, *Flores v. Meese*, was filed against the INS challenging the way the agency processed, apprehended, detained, and released children in its custody.⁶⁵ In 1997, a California federal court approved the *Flores* settlement agreement on national policy regarding the detention, release, and treatment of children in INS custody (*Flores* agreement). These conditions are still in force today and apply to all children apprehended by DHS.⁶⁶ Although there have been other laws that make advancements regarding the detention of children, *Flores* remains a baseline the government must follow when it detains children. Many of the agreement’s terms have been codified at 8 CFR §§ 236.3, 1236.3.

The agreement defines a juvenile as any person under the age of 18 who is not emancipated by a state court, and who is not convicted and incarcerated due to a conviction for a criminal offense as an adult. It requires that juveniles be held in the least restrictive setting appropriate to their age and special needs to ensure their protection and wellbeing. It also requires that juveniles be released from custody without unnecessary delay to a parent; legal guardian; adult relative; individual specifically designated by the parent; licensed program; or, alternatively, an adult who seeks custody whom DHS deems appropriate. The *Flores* agreement and government policy also mandate that “juveniles will not be detained with an unrelated adult for more than 24 hours.”⁶⁷ The *Flores* agreement applies to all children in immigration custody, meaning both unaccompanied children and children detained with family.

⁶⁴ International Detention Coalition. (2009). Children in Immigration Detention Position Paper, pp. 6-7. Retrieved from <http://idcoalition.org/wp-content/uploads/2009/05/childrenpositionpape.pdf>.

⁶⁵ *Flores by Galvez-Maldonado v. Meese*, 942 F.2d 1352 (9th Cir. 1991) *rev'd sub nom. Reno v. Flores*, 507 U.S. 292 (1993).

⁶⁶ See Stipulated Settlement Agreement, *Flores v. Reno*, Case No. CV85-4544-RJK (C.D. Cal. 1997) (hereinafter “*Flores* Agreement”). Retrieved from https://www.aclu.org/sites/default/files/assets/flores_settlement_final_plus_extension_of_settlement011797.pdf.

⁶⁷ U.S. Immigration and Naturalization Service. (2003, November). Immigration and Naturalization Service Juvenile Protocol Manual § 2.3.2, p. 7. Retrieved from http://www.ice.gov/doclib/foia/dro_policy_memos/juvenileprotocolmanual2006.pdf.

B. Immigration and Customs Enforcement detention

Prior to 2003 and the creation of ICE, children were held in the custody of INS pending a resolution of their legal case. Despite the 1997 *Flores* agreement, conditions of confinement were wholly inappropriate, and one-third of these children were held in juvenile detention facilities intended for the incarceration of youth offenders. Many children were commingled with the delinquent population, subject to handcuffing and shackling, forced to wear prison uniforms, and locked in prison cells. Many were *de facto* denied access to legal and social services critical to their pursuit of asylum or other forms of relief because they were housed in remote facilities far from available services. Children who needed mental health services could only be seen by psychologists or psychiatrists who worked for the federal government, and whose assessments or recommendations tended to align with the interests of the INS. In addition to the inadequacy of services provided, the fact that the same agency was responsible for both care and enforcement created a significant conflict of interest.

Pursuant to the Homeland Security Act, in March 2003, the INS transferred its detention operations to the newly created Department of Homeland Security.⁶⁸ The Act shifted the responsibility for care and custody of unaccompanied immigrant youth to the ORR in March 2003.⁶⁹ Under the terms of the HSA, the newly created DHS retained enforcement and prosecutorial authority related to unaccompanied children, while ORR was given responsibility for all placement decisions, as well as for the provision of children's care.⁷⁰ The HSA defined an unaccompanied child as a child that has no legal status in the United States, has not attained 18 years of age, and has no legal guardian or parent in the U.S. able to provide care and physical custody.⁷¹

Today, ICE detains immigrants in over 250 facilities around the United States. Nearly 67 percent of the ICE detained population are housed in local or state facilities.⁷²

ICE facilities today operate according to the unenforceable National Detention Standards established in 2000. There is no legal requirement that these standards for adults be followed⁷³ and no accountability for any harm that may result in a failure to comply with these standards. In 2008, ICE solicited input from NGOs and released an expanded and revised version of its detention standards, which they called the 2008 Performance Based National Detention Standards. The new standards were an improvement, and include provisions for preventing and reporting sexual abuse and assault, detainee searches and staff training. The administration solicited further input and made additional improvements to create what are known as the 2010 Performance Based National Detention Standards. These improved standards are still being implemented.

⁶⁸ HSA, Pub. L. 107-296, § 441, 116 Stat. 2135, 2205 (2002).

⁶⁹ HSA, Pub. L. 107-296, § 462(a), 116 Stat. 2135, 2205 (2002).

⁷⁰ As part of that transfer, DHS is now required to abide by the *Flores* settlement. See HSA, Pub. L. 107-296, § 1512(a), 116 Stat. 2135, 2205 (2002). See also *Flores* Agreement, p. 22.

⁷¹ 6 U.S.C.A. § 279(g) (West).

⁷² Detention Watch Network. About the U.S. Detention and Deportation System. Retrieved from <http://www.detentionwatchnetwork.org/resources>.

⁷³ *Flores* Agreement, p. 7. (Defining the scope to apply only to the detention of children.)

With the exception of family detention facilities previously discussed, most detained immigrant children in immigration proceedings today are in the custody of ORR. In general, ICE should not have custody of any children other than those in family detention.

1. Detention in Border Patrol facilities

When a child is initially apprehended entering the United States without authorization, they may be encountered by Customs and Border Protection. CBP maintains short-term hold facilities along the border and at all official ports of entry to the United States, including airports and bridges. If CBP encounters a child, traveling alone or with family, and they do not believe that child has permission to enter the United States, they will put that child in a holding cell. If a child is traveling with family, the child will be held with their family members. If they are unaccompanied, they will be held with other juveniles.

CBP facilities are intended to be short-term hold areas for children while BP officers determine the child's authorization to enter the United States, process a credible fear claim, or wait for another agency, e.g., ICE or ORR, to transfer the child to another facility. Children should not be held in those facilities for longer than 72 hours. After 72 hours, if CBP deems it necessary to continue the detention of a child, ICE must transfer that child to a long-term ORR or ICE facility.⁷⁴ Often, due to delays in transport or a lack of long-term immigration detention capacity around the country, children have been held for much longer in CBP short-term hold facilities, up to two weeks.⁷⁵

Children brought to CBP facilities for processing are detained in hold rooms. Border Patrol defines hold rooms as detention cells or search or interview rooms where individuals are temporarily detained pending processing or transfer. OFO defines hold rooms as areas at ports of entry where detained individuals may be temporarily held pending secondary processing, which involves verifying documents and conducting interviews.⁷⁶ Border Patrol has issued a Hold Room and Short Term Custody policy dated June 2, 2008 but it is neither public nor enforceable. The agency is, however, currently developing a policy that would address how both OFO and BP must treat children in their custody.⁷⁷

Although Border Patrol stations and ports of entry are entirely different structures because ports of entry are usually large permanent structures and Border Patrol stations usually are very small, and often temporary and remote, the hold rooms in each type of facility are very similar. Children are held in separate rooms from unrelated adults. Most hold rooms are built to resemble jail cells. They are generally concrete rooms with no windows to the outside and one door that locks from the outside. The door has a window so CBP officers and agents can watch the children inside the room. Most hold rooms have a toilet that may, or may not, have a privacy wall.

⁷⁴ TVPRA of 2008, § 235(b)(3).

⁷⁵ Women's Commission for Refugee Women and Children. (2012, October 15). *Forced From Home: The Lost Boys and Girls of Central America* (hereinafter "Forced From Home"), p. 4. Retrieved from <http://womensrefugeecommission.org/resources/document/844-forced-from-home-the-lost-boys-and-girls-of-central-america>.

⁷⁶ OIG Report, p. 4.

⁷⁷ Aguilar, D.V. (2008, June 2). *Hold Room and Short Term Custody* (redacted) (hereinafter "Hold Room Policy"). *Memo from Chief, U.S. Border Patrol*. Retrieved from <http://foiarr.cbp.gov/streamingWord.asp?i=378>.

The sizes of the rooms vary considerably. Some are designed to hold only one person and others have the capacity to hold more than fifty. There are reports of extreme overcrowding in the hold rooms and children having to lay down in shifts during the night because there is not enough room for them to sleep.⁷⁸ Most rooms have concrete or metal benches for children to sit for the duration of their stay. None have a sink for children to wash their hands or any other facility in which a person can clean herself. The lights are kept on 24 hours a day. No rooms have beds for children kept overnight; however, some facilities provide thin mattresses and blankets. Most hold rooms are kept very cold and many children report suffering greatly from the cold, especially if not provided a blanket.⁷⁹

Although most hold rooms have drinking water available to migrants, either in coolers, or from a fountain connected to the toilet, some children report not knowing they have access to it.⁸⁰ The Hold Room and Short Term Custody policy requires that children are provided food every 4-6 hours, and are allowed to request snacks and juice or milk at any other time.⁸¹ Despite the policy, there are still many children who report that this requirement is not followed.⁸²

Some children who have suffered greatly during their migration have severe medical needs at the time of their apprehension and detention by CBP. Pregnant girls and children who have suffered sexual assault during their journey are in particular need of immediate medical attention. CBP has limited capability to tend to a child's medical needs, and not all government officials inquire into these needs.⁸³

There are also widespread reports of verbal and physical abuse of children by CBP officials. Children report being thrown to the ground, hit on the back, and having their arms twisted by officials. Some have reported being handcuffed, spit at, and yelled at.⁸⁴

To ensure U.S. government officials are able to adequately serve the needs of children detained in these short-term hold facilities before they are returned to Mexico or sent to a longer-term ORR shelter, the agents must be able to speak with the children and screen them. While some officers speak Spanish, indigenous children who do not speak English or Spanish present a particular challenge. In these cases, government officials must rely on a telephonic translation. This option has many shortcomings, particularly for children already reluctant to discuss a fear of return or other traumatic or sensitive issues.

⁷⁸ Forced From Home, p. 21.

⁷⁹ Americans for Immigrant Justice. (2013, August). The "Hieleras": A Report On Human & Civil Rights Abuses Committed by U.S. Customs & Border Protection, p.3. Retrieved from <http://aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>.

⁸⁰ OIG Report, pp. 9-11.

⁸¹ Hold Room Policy, p. 8.

⁸² Forced From Home, p. 20.

⁸³ OIG Report, pp. 13-14.

⁸⁴ Forced From Home. pp. 11, 22.

Eduardo's Story

Eduardo, 17, was crossing the desert on foot near McAllen, Texas when his group of five was stopped by Border Patrol. He was one of three youth in the group; the others were a pregnant woman and a guide. The Border Patrol agent grabbed his neck and shoved him, then used a taser gun on him and the other migrants, including the pregnant woman and guide. Once inside the ice-cold cells, the Border Patrol agents continued to verbally harass and insult him, using emasculating words and insults against his mother. Whenever he or the others tried to speak up for their rights, the agents slammed the doors aggressively to intimidate them.⁸⁵

Thus, despite the *Flores* and TVPRA standards for the treatment of children in CBP facilities, in practice, these facilities are not appropriate places to hold children.⁸⁶ Some children are held in these facilities for several days or weeks. While most children are transferred to an ORR facility or repatriated to Mexico within 48 hours, for traumatized children even 48 hours is too long to be held in these conditions. Children in these facilities have no access to an attorney or any legal advice or screening. Although CBP agents report using phone interpreters for children they cannot communicate with, particularly children who speak indigenous languages, children report not understanding agents who are trying to screen or care for them.⁸⁷

Exacerbating these problems is the complete lack of a functioning complaint process within CBP. There are no signs in CBP holding areas to inform children and adults of their rights to just treatment and to complain if they suffer abuse. Even if they come to know their rights, individuals have no means to make a complaint while they are in custody. There are few communication channels for individuals being transferred from CBP to ICE or ORR. They have no Internet access and limited or no phone access, and are not provided with paper complaint forms. Those who have tried to navigate the complaint system have found it inefficient and difficult to use. Attorneys and parents who have used the system report no useful, if any, response.⁸⁸ Recently, human rights groups filed complaints on behalf of over 100 children who reported being mistreated in these facilities.⁸⁹ The agency is currently conducting an internal review but it is proving difficult to

⁸⁵ Forced from Home, p. 22.

⁸⁶ See also Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶ 182 p. 69 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

⁸⁷ United Nations High Commissioner for Refugees (UNHCR). (2014, June). Findings and Recommendations Relating to the 2012 – 2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border, p. 35. Retrieved from http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf.

⁸⁸ Women's Refugee Commission. (1999). It's Time for Customs and Border Patrol to Improve its Woefully Inadequate Complaint System, Retrieved from <http://www.womensrefugeecommission.org/component/content/article/55-programs/detention/1999-it-s-time-for-customs-and-border-patrol-to-improve-its-woefully-inadequate-complaint-system>.

⁸⁹ ACLU Border Litigation Project, Americans for Immigrant Justice, Esperanza Immigrant Rights Project, Florence Immigrant and Refugee Rights Project, & National Immigrant Justice Center. (2014, June 11). Complaint Regarding the Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection. Retrieved from <http://www.acluaz.org/sites/default/files/documents/DHS%20Complaint%20re%20CBP%20Abuse%20of%20UICs.pdf>.

substantiate the information in the complaints because by the time the children were able to report what happened to them, the information was old.⁹⁰

C. Detention in ORR facilities

Unaccompanied children from non-contiguous countries and unaccompanied Mexican children who cannot be directly returned to Mexico under the criteria in the TVPRA are transferred to an ORR facility. ORR runs shelters designed to be an alternative form of detention more appropriate for children. The ORR shelters are intended to be facilities that appropriately care for children while adult sponsors are available to come get them. Unlike ICE adult or family detention, they are usually not penal-like and not designed to be punitive, but rather serve as a way to protect unaccompanied children until an appropriate adult is available to care for them.

1. Types of facilities

The Office of Refugee Resettlement has four different kinds of detention facilities to hold unaccompanied immigrant children. These facilities are different than state foster programs that house U.S. citizen children. ORR facilities are only for unaccompanied immigrant children. These facilities operate along a continuum of care from least restrictive settings to more penal like settings. From least to most restrictive, the types of facilities are: short-term and long-term foster care; shelters and group homes; therapeutic foster care and residential treatment centers; and staff-secure and secure facilities. The placement determinations for each child are made based on information regarding the child's best interests and security risk. The *Flores* agreement and the TVPRA of 2008 mandate that children be housed in the least restrictive setting possible, and the DCS continuum of care is reflective of this principle. DCS generally uses less restrictive facilities than the former INS used.⁹¹

Foster care. The least restrictive custody placement for a child who has not been reunified is foster care with host families in local communities. Temporary (short-term) foster care is reserved primarily for children under the age of twelve, pregnant and parenting teens, and sibling groups. These children receive services through a DCS-funded care provider but live in private homes. Special needs children with disabilities, or medical or mental health concerns, may be placed in therapeutic foster care. Long-term foster care is available as a secondary placement (transfer from another facility) for children who have been or are likely to be in custody for extended periods of time, such as children for whom reunification is not a possibility and whose immigration cases are not likely to be resolved quickly, e.g., asylum seekers.

Foster care—both short-term and long-term—enables children in DCS custody to benefit from the services of a DCS program while residing in a community-based setting with a family. Children in short-term foster care typically receive services at a range of locations, including in the foster home, at the DCS program sites, and at counseling centers. Foster families are licensed according to the licensing regulations of the state in which they are located.

⁹⁰ Office of the Inspector General, Department of Homeland Security. (2014, August 28). Oversight of Unaccompanied Alien Children. Retrieved from http://www.oig.dhs.gov/assets/pr/2014/Sig_Mem_Over_Unac_Alien_Child090214.pdf.

⁹¹ Halfway Home, p. 17.

Shelters and group homes. Shelters and group homes are the next least restrictive setting on the DCS continuum of care and custody. Children who cannot be released or placed in foster care but who do not need a higher level of supervision or services are placed in shelters or group homes. One common reason a child is placed in a shelter or group home rather than foster care is the lack of beds available in foster care. Shelters can vary widely in size. Group homes typically house fifteen or fewer children and tend to be less restrictive. This is the optimum model when children must be placed in shelter care. However, many shelters house a large number of children, up to 300 children, and have a more institutional feel as a result. In the large shelters, there tend to be more restrictive measures in place in order to maintain control. In 2011 and in 2014, the federal government did not have enough bed space in their shelters to house unaccompanied children in need. As such, they borrowed space from the U.S. Military and put children in repurposed buildings on military bases until the children could either be reunified or sent to a regular ORR facility. Although there were concerns that the children in these facilities did not enjoy all the benefits children in regular facilities did, such as know your rights presentations, the use of these facilities to house migrant children ceased after a few months.⁹²

Conditions and practices in shelters and groups home vary by state and by the size and location of the program, and are subject to state regulations as well as national standards. Children generally sleep in dorm-style rooms with several children per room. In some cases, children can move into more private rooms as a reward for good behavior. Shelters generally have a kitchen, dining area and common living room area. Some of the shelters appeared to be overcrowded. Children at some facilities are able to wear their own clothing. At others, they are given uniform-like clothing such as jeans or shorts, and polo or t-shirt.

The level of security in these facilities is far more stringent than in foster care programs. In theory, children in shelters should have freedom of movement within the facility. However, they typically live and receive education and other services on-site, and are not free to leave the facility unaccompanied by staff. Facilities are locked and surrounded by fences. In some facilities, freedom of movement within the shelter is also limited, with children having to stay within sight of staff and not free to go in their bedrooms or outside at will. Many shelters and group homes are monitored by cameras 24 hours a day, and many of the children we spoke with complained of having no privacy, even when they wanted time alone to cry or think.

Staff-secure facilities. Children who are deemed to be high risk are placed in staff-secure facilities. Many staff-secure facilities closely resemble or are not significantly different from juvenile correctional facilities and secure facilities. According to the DCS manual, staff-secure placement is designated for children who require close supervision but who do not need placement in a secure facility. The DCS manual provides a list of criteria to consider in assessing the appropriateness of a staff-secure placement. These criteria include inappropriate sexual behavior, disruptive acts such as destruction of property, and non-specific threats to commit a violent act that do not involve a significant risk to harm another person. In practice, children with an offender history that is not serious, children who are flight risks, and children who have displayed disruptive behavior in a shelter program, are considered for staff-secure placement. The DCS manual states that staff-secure facilities use staff supervision rather than architectural barriers, such as barred

⁹² Forced From Home, p. 16.

windows or locked doors to control the children. However, some staff-secure facilities do utilize architectural barriers such as bars, fences, and locked doors.

Secure facilities. Secure facilities are the highest level of restrictiveness in the DCS placement continuum. The DCS manual considers secure placement to be appropriate for children (i) charged with or convicted of a crime or adjudicated as delinquent; (ii) who have committed or threatened acts of crime or violence while in DCS custody; (iii) who have engaged in unacceptably disruptive acts; (iv) who are a flight risk; or (v) who need extra security for their own protection. Secure facilities are similar to prisons, with children having no opportunity to move freely without a guard's supervision. The TVPRA of 2008 requires monthly reviews to determine whether or not a secure facility is appropriate for a child.

These facilities provide a wholly jail-like environment with little access to individualized or therapeutic services for the children held there. Secure facilities, and some staff-secure facilities, are built around an enforcement model and tend to focus on protection of the staff, rather than on the needs of the children. Secure facilities are usually located within larger juvenile correctional centers or separate facilities laid out like prisons in which children have little personal space, recreation opportunities, or freedom of movement. As in all facilities run by ORR, the child's ability to communicate with family members, either in the United States or in their home countries is extremely limited. Children are generally permitted a short phone call once or twice a week. Children are generally unable to visit with family while they are in these facilities.

2. Current concerns with ORR facilities

As previously stated, the 2003 transfer of custody from INS to ORR's DCS program was a positive move towards better protections for unaccompanied children. However, the speed with which the DCS program was created and the drastic increase in the number of children apprehended made the development of a new program model based entirely on child welfare principles difficult. The former INS was resistant to hand over information and money to ORR and, as a result, the transfer faced many obstacles. Furthermore, ORR was not accustomed to implementing an operational program responsible for the actual care and custody of children; this has led to some obstacles in effective implementation.⁹³ While the situation has improved, vestiges of these past tensions remain.

Most children are much better off in the DCS program than they were under the INS. The DCS model is softer and has added some child welfare components, including social workers and case workers at the field level. ORR has dramatically increased the use of foster care, added the staff-secure and residential treatment center options, and ended contracts and agreements with most of the secure facilities used by the former INS. Yet the incomplete remodeling of the program perpetuated the old INS model that viewed children as a security or flight risk, confusing the role of prosecutor and caretaker. This has affected the location of facilities and encouraged institutionalization, making facilities more impersonal and prison-like.

Location of facilities. As previously stated, if CBP deems it necessary to continue the detention of a child, it is ICE's responsibility to transfer that child to an ORR or, in rare circumstances, an

⁹³ Halfway Home, p. 4.

ICE facility.⁹⁴ To enable timely and less expensive transfer of children, DHS has pressured ORR to place DCS facilities in border areas. As a result, many ORR facilities are located in rural areas that lack access to adequate medical, mental health care, and legal services. According to the DCS manual, DCS should consider proximity to point of referral from DHS, as well as the needs of the child when determining placement.⁹⁵ Because many rural areas near the border lack services, this creates obvious tensions between convenience and care. Thus, in making placement decisions, DCS has allowed DHS interests to take precedence over the best interests of the child.

Trend towards institutionalization. Following the transfer of care and custody of children to ORR, the government took steps to deinstitutionalize the INS model. The agency discontinued agreements with 31 secure juvenile detention facilities, began placing some children in foster care, increased reunification efforts, and took steps to introduce and implement social work principles by hiring social workers at both headquarters and in the field. However, much of the fundamental structure of the program has remained the same. While most children are released or placed in foster care or shelters, over time there has been a move toward re-institutionalization and in some cases criminalization, despite the fact that small, homelike settings are better equipped to meet the physical and emotional needs of children. Some facilities have become too large to adequately serve children's needs. Both care and safety are compromised by this reliance on large facilities, as it is difficult for staff to provide children the individualized attention necessary to address their high levels of trauma and vulnerability.

This trend toward the use of large facilities may be due in part to the rapid increase in the number of unaccompanied children crossing the border, and to DCS's difficulty in finding enough facilities to house children. Larger facilities necessarily rely on greater institutionalization as a means of maintaining control. They have a higher staff to child ratio and are less able to adapt services to the unique needs of individual children, particularly a child who may speak an indigenous language, or may have been a victim of sexual assault or is pregnant. Even lower security shelters have also started adding more security, including more cameras and bars on doors and windows because it is difficult for staff to monitor the large numbers of children housed in them. Due to a lack of mental health services available in less restrictive facilities, some children are inappropriately placed in secure facilities.

⁹⁴ TVPRA of 2008.

⁹⁵ Halfway Home, p. 14.

VI. Release from detention

A. Overview

Once a child is determined eligible for placement in an ORR facility, the federal government makes a determination whether or not that child can be reunified with an adult sponsor in the United States for the pendency of his immigration court case. As of 2014, approximately 90% of the children in ORR custody were eventually released to an adult sponsor in the United States.⁹⁶ A sponsor for a child may be a parent, legal guardian, family member, or other responsible adult willing to care for the child. Of the children who are eventually reunified, 50% go to live with a parent.⁹⁷

The dramatic increase of children without a corresponding increase of funds to run the program has forced ORR to streamline its reunification procedures. This has led to a reduction in the types and quantity of services it is able to offer children, particularly in the review and follow-up of any placement decision following release from detention.

Due to these dramatically expedited reunification procedures, the amount of time a child will spend in ORR custody has decreased dramatically since 2011. Previously, children spent close to 60 or 90 days in custody.⁹⁸ In 2014, the average length of stay for an unaccompanied child who is detained in an ORR facility is less than 30 days before they are repatriated or released to a sponsor.⁹⁹ For children released to a parent or guardian, reunification normally happens in less than 7 days. The sections below provide an overview of procedures for children released to sponsors or others in the United States. For more information on procedures for children who are released for repatriation, see chapters 7 and 12.

B. Concerns with current release procedures

Screening of sponsors. Many of these changes have resulted in realistic concerns that the procedures now lack adequate screening and safeguards to ensure that sponsors can appropriately care for these children. In the worst case, the lack of safeguards leave these children more vulnerable to abuse or exploitation. Some changes made during times of heavy migration of unaccompanied children, for example, parents who are able to show proof of their relationship to

⁹⁶ Administration for Children and Families, Office of Refugee Resettlement. (2014, May). Fact Sheet, U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program. Retrieved from https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

⁹⁷ Information presented orally by the Office of Refugee Resettlement at the May 22, 2014 meeting of the Inter-Agency working group on unaccompanied and separated children held at the U.S. Conference of Catholic Bishops.

⁹⁸ Bryne, O., & Miller, E. (2012, March). *The Flow of Unaccompanied Children Through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers*, p. 16. Retrieved from <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>.

⁹⁹ Administration for Children and Families, Office of Refugee Resettlement. (2014, May). Fact Sheet, U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Alien Children Program. Retrieved from https://www.acf.hhs.gov/sites/default/files/orr/unaccompanied_childrens_services_fact_sheet.pdf.

the child for a short time were no longer required to submit to a fingerprint check that could reveal a criminal history indicating that the adult, may endanger a child. Child welfare experts assert that in no other context would a child be released to an adult without this assurance, even if the adult were a parent. As discussed below, this very limited screening can lead to children being mistreated by their sponsors and in some cases re-detained or placed in county foster care.

Insufficient access to support services. As the amount of time children spend in ORR facilities decreases, so does their limited access to mental health, medical, and legal services. Children in ORR care may have had exposure to multi-layered trauma via experiences in their home country that compelled their migration, as well as violence encountered during their journey to the United States. Some children are pregnant, and others have acute mental illness. They have limited access to services while in government care, and even less assistance once released to the community. Long separations, challenging cultural adjustments, and the children's past experiences place significant stress on the family or sponsor relationship. Families need support to navigate complex systems to ensure long-term stability and integration. Since ORR has implemented these changes to their reunification system, there has been no systematic review of the new procedures to ensure they are adequate to protect this vulnerable population. Moreover, there is no mechanism for ORR to track children once they leave detention to ensure they do not fall through the cracks.

Maria's Story

Maria, a 16-year old girl from Guatemala was initially detained in DCS custody. She was later released to her adult sister's custody. No home study of the sister was ever conducted. Her sister forced her to work as a waitress and a stripper in a local bar. Three months after her release from DCS, local police raided the bar, identified her a trafficking victim and returned her to DCS.¹⁰⁰

Few children who are referred for post-release follow up services, such as home visits with social workers to ensure the children are adequately cared for and receiving the support they need, receive those services. In 2013, there were 300 children on a wait list for post release services. These were children who were determined eligible for these services, but due to ORR's lack of funded capacity, were released without them and placed on a waitlist. In early 2014, children waited for approximately six weeks or more for these services. This is a long timeframe during which tenuous living situations can break down.

VII. Unaccompanied Refugee Minor Program

Children in ORR custody who are never reunited with a sponsor, and who have received legal status and will remain in the country, are transferred to the Unaccompanied Refugee Minor Program (URM) within ORR. The URM program has the legal responsibility to ensure, under state law, that unaccompanied child refugees and entrants receive the full range of assistance, care, and services available to foster children in their state. It functions akin to a federal foster care system for refugee youth, victims of human trafficking, and other unaccompanied children who have secure legal immigration status.

¹⁰⁰ Halfway Home, p. 19.

The URM foster care program includes a comprehensive set of services and financial supports designed to assist youth through their transition process in the United States. These services provide for them while they obtain an education, and prepare them for eventual independence. These services are specially geared towards the needs of foreign-born youth, with a focus on blending their cultural identity with their new American environment. Services provided include: indirect financial support through the provision of housing, food, clothing and other necessities; educational supports; medical, mental health, and legal services; intensive case management; cultural and recreation activities; and mentoring and life skills training. Children are eligible to enter the program before age 18 and can remain with a host family until age 20 or 23, depending on the child welfare guidelines of their state.¹⁰¹

VIII. Conclusion

The situation of child migrants in the United States has advanced in some areas, specifically in the custody of unaccompanied children; however, it has also deteriorated in other ways, such as through the expanded use of overly-restrictive family detention facilities. The recent increase in the numbers of children traveling alone and with family members has put a strain on the U.S. government, leading to heightened attention to the situation at the U.S.-Mexico border and to modification of existing policies. Even if migration flows decrease, advocates and the public should continue to shine a spotlight on detention practices, and the government must improve transparency in its handling of migrant children. The U.S. government should shift toward employing greater use of alternatives to detention, serving as model for the rest of the region in accordance with the rights of migrant children under domestic and international law.

In late 2014, the Inter-American Court for Human Rights issued an advisory opinion on migrant children and international protection needs.¹⁰² It reviews states' obligations to ensure protections for migrant children when adopting or implementing domestic laws. The opinion is clear that states must take a rights-based approach and consider the best interests and protection of a child over any concerns regarding nationality or migrant status. The United States has taken steps toward this end, but its recent responses to the influx of child migrants could roll back positive advancements. We must remain vigilant this does not occur.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>.

¹⁰¹ USCCB Migration and Refugee Services & Lutheran Immigration and Refugee Service. (2011, March). Foster Care for Unaccompanied Refugee & Immigrant Children, Frequently Asked Questions. Retrieved from <http://lirs.org/wp-content/uploads/2012/05/URM-FAQ-JOINT-LIRS-USCCB-UPDATED-3-2011.pdf>.

¹⁰² See Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.